

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the Signalmen's Agreement when it failed and refused to pay Signal Helper H. R. Taylor fourteen (14) hours at the time and one-half rate for services performed during week of July 4 to July 10, 1955.

(b) Carrier shall now compensate Signal Helper H. R. Taylor the difference between what he did receive at his straight-time basic rate of pay and what he should have received for time and one-half the basic straight-time rate as Signal Helper for the hours in excess of 40 straight-time hours worked in that week on his two rest days. [Carrier's file G-349-2; G-349]

EMPLOYEES' STATEMENT OF FACTS: Signal Helper H. R. Taylor held a regular assignment as such in gang No. S-14 (C. C. Hacker's Gang), Cincinnati Division. Gang S-14 is regularly assigned to work-week Monday through Friday, with Saturdays and Sundays as rest days.

Signal Helper Taylor rendered service in his regular assignment on Gang S-14 during the week of July 4, 1955, as follows: July 4 was a holiday, for which he was paid 8 hours, and on July 5, 6 and 7 he worked 10 hours each day, for a total of 38 hours. Signal Foreman C. C. Hacker, on instructions from Signal Supervisor R. C. Austin, notified H. R. Taylor that he was to report to Signal Gang No. 16, car retarder job at Latonia, Ky., to relieve a vacationing employe on such gang, and worked on such position for 8 hours on Saturday, July 9, and 8 hours on Sunday, July 10, for which he was paid at the straight-time rate of pay.

Signal Helper Taylor therefore worked 54 hours, which is 14 hours in excess of 40 hours in that work week.

Further, if this board should perchance decide otherwise, the carrier wishes to respectfully call attention to the fact that in each and every case the agreement refers to **work** in excess of 40 hours and the holiday, July 4, for which Taylor was compensated cannot be counted as **work** performed. On this basis Taylor actually **worked** 30 hours in Gang 14 and 16 hours in Gang 16 during the so-called work week making a total of 46 hours. He was paid straight time for 46 hours worked making the difference between 6 hours at time and one-half and 6 hours at the straight time rate paid, the only possible point of contention. This would amount to only 3 hours at penalty rate.

The carrier reiterates, however, that when Taylor went to Gang 16 he was on a different assignment and was subject to the conditions of that position as to days worked, rest days, etc. Rule 17 (e) and (f) except the payment of overtime under these conditions.

The carrier submits that in view of the foregoing, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Taylor held a regular assignment as Signal Helper in Gang 14, with a work week of Monday through Friday, Saturday and Sunday being rest days. Effective as of Saturday, July 9, 1955 he was instructed to relieve a vacationing employe in Gang 16, which had a work week of Saturday through Wednesday, with Thursday and Friday as rest days. Claimant performed this relief for eight hours each day from Saturday, July 9, through the following Wednesday. Claim is made that Taylor was entitled to be paid at the overtime rate for the hours in excess of 40 straight-time hours worked in the week of July 4 on his rest days. Carrier responds Claimant moved from one assignment to another, with the result that Saturday and Sunday, July 9 and 10,, became his regular work days. Carrier points to the exceptions contained in Rule 17, Paragraphs (e) and (f), of the Agreement.

Since the pertinent contract clauses have been recited by the parties, they need not be repeated here. The question is whether Claimant did, in fact, move from one assignment to another within the meaning of the Agreement. There has been some conflict in Board awards on this subject. We note, however, that Claimant did not volunteer for the assignment in question: Award 4440. We hold to the view that under the confronting facts, Claimant did not move from one assignment to another. Awards 6382, 6440. Were Carrier deemed free to require an employe holding a regular assignment to relieve absent employes at the straight-time rate on the rest days of said regular position, the result would be that such an employe could be required to work six or seven days per week indefinitely without overtime pay. This would be contrary to the 40 hour week concept of the Agreement. The claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July, 1958.