Award No. 8835
Docket No. SG-8478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America, on the Norfolk and Western Railway Company that:

(a) The Carrier violated the Signalmen's Agreement when it failed to call Signal Maintainer R. E. Dillon, who was on assigned stand-by, to clear signal trouble.

(b) Signal Maintainer R. E. Dillon be paid 5 hours at the overtime rate of pay August 15, and 6 hours at the overtime rate of pay August 16, 1952, for work performed by Signal Maintainer W. B. Helm, who was not assigned for stand-by service on the dates mentioned above.

EMPLOYES' STATEMENT OF FACTS: R. E. Dillon is regularly assigned as Signal Maintainer with headquarters at Salem, Virginia.

W. B. Helm is regularly assigned as Signal Maintainer with headquarters at Elliston, Virginia.

In accordance with the provisions of Article 2, Section 10, of the agreement, as revised effective September 1, 1949, R. E. Dillon was assigned to be held subject to call over the week-end of August 16 and 17, 1952, between points, mile post 259, located in Roanoke Terminal and West to West end of Montgomery Tunnel. Such subject-to-call service began Friday, August 15 at 4:00 P. M. and ended Monday, August 18 at 7:00 A. M.

R. E. Dillon was, therefore, being held subject to call for service on his own territory and that of Signal Maintainer W. B. Helm, on the days involved.

At 7:00 P. M. on August 15, Signal Maintainer W. B. Helm was called for signal trouble between Elliston, Va., and Shawsville, Va., and worked until 12:00 midnight. The trouble was not cleared, and he returned on Saturday, August 16, and cleared the trouble after another six hours of service.

contention that Dillon (or, as a matter of fact, any of the other six Radford Division signal maintainers who were standing by on August 16 and 17, 1952) was entitled to be called for the service on the Elliston section August 15 and 16, 1952.

Nothing in Article 2, Section 10, gave Dillon any exclusive rights to the service on the Elliston section August 15 and 16, 1952. He was subject to service on the Elliston section only in event he had been called for the service on that section. The use of Helm on his section August 15 and 16, 1952, did not conflict with the provisions of the third paragraph of Article 2, Section 10. To the contrary, the use of Helm on his section August 15 and 16, 1952 was in accordance with the agreed to understanding shown in Item 2 of Attachment "G", and was in harmony with the limitations in the third paragraph of Article 2, Section 10, insofar as Dillon was concerned. Calling of Helm for the signal trouble starting about two miles west of his headquarters instead of calling Dillon, who would have had to travel about 15 miles, was in keeping with the intent and purpose of the agreed to understanding as shown in Item 2 of Attachment "G". All of the Carrier's obligations to Dillon, under Article 2, Section 10, were fully met and satisfied by paying him four hours at straight time rate for each date, August 16 and 17, 1952.

The Carrier reiterates that Dillon had no exclusive rights under Article 2, Section 10, to the service on the Elliston section. The rule stops short of providing for any exclusive right of any stand-by maintainer to any particular service, and this is adequately supported by the fact that the second paragraph of Article 2, Section 10, expressly provides for payment to a signal maintainer under Article 2, Section 9, only in event "**when** called". In connection with the matter of "exclusive rights" to service by stand-by employes, attention is invited to Third Division Award 4894, which involved the following: Claimant Porterfield, an Assistant Signal Maintainer with headquarters at Carew, S. C., was assigned to a maintenance section. Assistant Signal Maintainer Benoy, with headquarters at Hamlet, N. C., was assigned to a maintenance section directly north of Porterfield's section. Both employes, in accordance with prearranged schedule and as provided for by terms of the current agreement were required by such schedule to stand by for call from 4:00 P. M., Saturday, May 1, to their regular reporting time on Monday, May 3, 1948. Benoy was called at 11:00 P. M., May 1, and performed work at Osborne **located on the north end of Porterfield's assigned section.** Claim in behalf of Porterfield was denied.

In the instant case, Signal Maintainer Helm was properly used for service on his section on August 15 and 16, 1952, in accordance with the agreed to understanding shown in Item 2 of Attachment "G". The claim in behalf of Signal Maintainer Dillon is not supported by Article 2, Section 10, as contended by the Employes. Therefore, the Carrier respectfully requests dismissal of Mr. Dillon's claim.

(Exhibits not Reproduced.)

OPINION OF BOARD: The Organization herein makes claim on behalf of Signal Maintainer R. E. Dillon, for pay at the overtime rate, for 5 hours on August 15, 1952, and for 6 hours on August 16, 1952. Contention is made that on such dates, Claimant was assinged on a stand-by basis, as provided by Article II, Section 10, as amended, of the effective Agreement between the parties. Such section relates to the assignment of

employes on rest days and holidays. The Claimant, as alleged was not used or called by Carrier, but one W. B. Helm, who was not on stand-by service was called by Carrier, as he held the regular assignment at the point where the signal trouble occurred, and which was located in the Elliston Section, while Claimant held his regular assignment in the Salem Section, although under the Agreement, Dillon was permitted to perform stand-by service, outside his own section.

Carrier contends that under the provisions of Article II, Section 10, there is no requirement that employes on a stand-by basis, as provided, be used for work on other than their own section. Carrier further contends that such service being outside his own section, it was not obligated to call the Claimant as alleged.

The facts of record before us show that on August 15, 1952, Claimant Dillon held his regular assignment 7:00 A. M., to 4:00 P. M., that he was on a stand-by basis from 4:00 P. M., the same day. That about 7:10 P. M., that day, signal trouble developed between automatic signals 2797 and 2811. In the emergency situation which had developed, the train dispatcher called the regular assigned maintainer W. B. Helm, to repair the signal trouble on his section. Helm made an inspection of the trouble and discovered that automatic signal 2797 was displaying a restricting signal, and was not of such character as to cause trains to stop or be delayed. Due to rain and weather conditions and the darkness, Helm advised the train dispatcher of his findings, and suggested that repairs be made during daylight August 15th. Helm went off duty at 12:15 A. M., for which he was paid for 5 hours at the overtime rate. For this emergency service Carrier properly called Helm. However, for the service 7:00 A. M. to 1:00 P. M., performed by Helm, we find such service was not performed in an emergency, since the signal trouble was not causing delay to trains, and Carrier should have called the Claimant who was standing by and available to perform such service. Claimant should be paid for such service of six hours, on August 16, 1952, at the overtime rate, this being in accord with the claim as alleged, and what he would have been paid had he been properly called by Carrier. This finding is not made for the benefit of Claimant as a penalty to be placed upon Carrier, but is in strict accord with the provisions of the Agreement and to allow Claimant that which he would have been properly entitled to, had he performed the service, as provided in Article II, Section 9 of the Agreement. See Award No. 5784.

The claim for 5 hours should be denied, and claim for 6 hours should be sustained as per findings.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement has been violated in accordance with the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.