

Award No. 9985
Docket No. SG-9484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(The Nashville, Chattanooga and St. Louis District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Nashville, Chattanooga and St. Louis Railway in behalf of D. H. Hill, W. C. Garner, and J. L. Fain, Signal Construction Gang Employees, for additional payment of four (4) hours for February 2, 1956, the amount of time they were forced to lose account of inclement weather (rain). (Carrier File No. B-542)

BROTHERHOOD'S STATEMENT OF FACTS: The claimants, D. H. Hill, W. C. Garner, and J. L. Fain are regularly employed in this Carrier's Signal Department Construction Gang with assigned work week of Monday through Friday, with Saturday and Sunday as rest days. The claimants are regularly assigned to and have common headquarters at this Carrier's Signal Department camp car outfit.

With no exceptions, the claimants are fully covered by the Signal Employees' current working agreement, which gives to them a work week of 40 hours, consisting of five days of eight hours per day, with two consecutive rest days off in each seven-day work week.

On February 2, 1956, the claimants were only permitted to work five hour of their regular eight-hour assignment, due to rain. Therefore, the claimants were deprived of completing their regular 8-hour tour of duty on this date, which resulted in the claimants only receiving thirty-six hours during that work week.

Claim was filed with Signal and Telephone Engineer E. W. Anderson by Local Chairman J. L. Fain under date of March 10, 1956, for recovery of the time lost, as follows:

"The Signal Construction Gang were forced to refrain from working on February 2, 1956 account of rain. Those affected namely were Mr. D. H. Hill, Mr. W. C. Garner and J. L. Fain.

"Rule 13-a of Signalman's Agreement is a guarantee rule and that the men are guaranteed five (5) eight (8) hour days per week under its provisions.

(2)

As regards the Employees' contention that Rule 13(a) was violated:

Rule 13(a) of the current agreement reads as follows:

"The regularly established daily working hours shall not be reduced below eight per day nor shall the regularly established number of working days be reduced below five per week, unless agreed to by a majority of the employees affected through their General Committee. Observance of the holidays outlined in Rule 14 shall not be regarded as reducing the hours or days."

The provisions of current Rule 13(a) are essentially the same as those of Rule 13 of the revision effective April 1, 1941, *supra*. It is a general rule and does not abrogate Rule 28.

Rule 28 is a special rule pertaining specifically to week-end trips and inclement weather.

This and other Boards have held that a special rule takes precedent over a general rule.

In Award 6278 this Board held:

"A rule negotiated to deal specifically with certain situations must of necessity be considered as controlling."

It is therefore evident that the determination of the instant case narrows down to interpretation of the inclement weather provisions of Rule 28.

* * * * *

In view of the foregoing facts, Carrier submits:

The historical facts regarding the inclement weather provisions of the Signalmen's Agreement on this property show conclusively that it was not the intent to pay employes for time not worked due to inclement weather, which fact is supported by the practice dating back to 1922 as evidenced by Carrier's Exhibits "A" and "B".

As claimants were paid in accordance with the practice followed for many years, there is no basis for the claim and same should therefore be denied.

* * * * *

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employees, either in conference or correspondence.

(Exhibits not reproduced)

OPINION OF BOARD: Petitioner contends that the Claimants, three Signal Construction Gang employes, were required, in violation of the applicable Agreement, to lose four hours work on February 2, 1956, because of inclement weather. It argues that the four hour loss is contrary to the provisions of Rule 13 (a) which reads as follows:

"The regularly established daily working hours shall not be reduced below eight per day nor shall the regularly established number of working days be reduced below five per week, unless agreed to by a majority of the employees affected through their General Committee. Observance of the holidays outlined in Rule 14 shall not be regarded as reducing the hours or days."

On the other hand Carrier points to the second paragraph of Rule 28 which provides as follows:

"During inclement weather, if in the judgment of the Management, there is sufficient work under shelter to keep employees assigned to camp cars employed, they will be given such work."

It is quite apparent that Rule 28's second paragraph is the specific provision of the Agreement dealing with the inclement weather problem and is therefore controlling in the present situation. See Awards 8692, 8457 and 8422.

In our opinion, a fair and reasonable reading of Rule 28 supports the construction and position advocated by Carrier. Whatever ambiguity may attend the wording of that provision is clarified by the past practice for while aspects of the parties' collective bargaining history, specifically the language differences between the present rule and its predecessors, may raise some question as to the soundness of Carrier's position, it appears that the parties have consistently recognized, both prior and subsequent to those contract changes, that Carrier possessed the discretion not to work employees in inclement weather when work under shelter was available. Award 5654 does not affect the matter since the past practice we have referred to is not incompatible with the terms of the applicable Agreement.

The record is barren of evidence that work under shelter was available at the time in question or that Carrier abused its discretion in any other significant respect. In the light of the foregoing discussion, we will deny the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1961.

Dissent to Award 9985, Docket SG-9484

The majority, consisting of the Referee and the Carrier Members, was fully aware of the unequivocal terms of Rule 13(a). They were likewise fully aware of the fact that Claimants were regularly assigned with regularly assigned hours and days per week except weeks in which one of the recognized holidays fall. Nevertheless, the majority has, because of that part of Rule 28 which assures gang employes the right to work under shelter during inclement weather if there is sufficient work under shelter to keep them employed, interpreted Rule 13(a) as though it read "Weather permitting the regularly established working hours shall not be reduced" etc.

The parties to the Agreement wrote an exception to Rule 13(a) to the extent that "Observance of the holidays outlined in Rule 14 shall not be regarded as reducing the hours or days.", therefore, the majority by a long line of decisions, erred in treating Rule 13(a) as though further exception is implied.

In light of the clear language of Rule 13(a) the majority committed further error in relying on past practice.

Award 9985 does not reflect the proper meaning and intent of the parties' Agreement, especially Rule 13(a); therefore, I dissent.

/s/ G. Orndorff
G. Orndorff
Labor Member