

Award No. 10007

Docket No. SG-9323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM. Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company in behalf of:

Signalman H. P. White for 10 days additional pay account no relief worker was assigned to the Minco territory while the incumbent, W. O. Davis, was on vacation. [Carrier's file L-130-55]

BROTHERHOOD'S STATEMENT OF FACTS: W. O. Davis is regularly assigned to position of Signal Maintainer, with headquarters at Minco, Oklahoma.

He took his assigned vacation from September 5 to September 16, 1955, inclusive.

W. L. Stickley is regularly assigned to position of Signal Maintainer on territory adjoining Minco territory and has headquarters at El Reno, Oklahoma.

M. D. Stowe is regularly assigned to position of Signal Maintainer on territory adjoining Minco territory and has headquarters at El Reno, Oklahoma.

C. A. Neal is regularly assigned to position of Signal Maintainer on territory adjoining Minco territory and has headquarters at Marlow, Oklahoma.

On September 7, 1955, Supervisor of Signals and Communications, E. L. Bartholomew, instructed C. A. Neal to check power on the Minco territory sometime before 5:00 P.M., Friday, September 9, to and including distant signal at south end of Chickasha, Oklahoma. This work was performed by C. A. Neal on September 8, 1955.

On September 9, 1955, W. L. Stickley was instructed to check power to and including Frisco Automatic Interlocker at Chickasha, Oklahoma, on Minco territory.

On September 12, 13 and 16, W. L. Stickley was instructed to handle the bonding of rails on the Minco territory which were being changed by the track forces.

It is hereby affirmed that all of the foregoing is, in substance, known to the Employees' representatives.

OPINION OF BOARD: Claim here is made on behalf of Signalman M. P. White for ten days additional pay account no relief worker was assigned to the Minco territory, during the period the regular assigned employee was on vacation.

The record here shows that the regular assigned employee was on vacation for a period of ten days. During such period Carrier did not assign a relief worker for such period and claimant although he performed no service on the vacationing employee's territory makes claim here for additional pay on the allegation that Carrier has violated the provisions of Articles 6 and 10 (b) of the National Vacation Agreement by failure to use a relief employee.

The employees argue that the Signal Maintainers who did perform service on the vacationing employee's territory during the vacation period performed service of forty-eight hours and argue that such evidence is proof that the time put in is in excess of twenty-five per cent of the work load of eighty hours as alleged since the employees state a total of forty-eight hours was consumed on the vacationing employee's territory.

Carrier contends that the employees did not work the hours alleged with the possible exception that Maintainer Stone may have worked eight hours on September 13, 1955. Carrier further contends that the record here shows that the Maintainers were not burdened in any manner, that the duties of their regular assignment were in no way neglected, that the vacationing employee was in no way burdened by his work not having been performed during his vacation period.

The proof here submitted by the employees does not support the claim. The employees have made no effort to break down the time each Maintainer performed service on dates alleged other than the bare statement they performed eight hours service. No evidence is produced as to amount of travel time consumed by the Maintainers from their headquarters to the vacationing employee's territory and return to their headquarters. Such time consumed has been held by this Board in considering actual work performed as not proper in relation to the distribution of the work load of the vacationing employee.

The employees have not shown by sufficient proof that work allegedly performed on the vacationing employee's territory exceeds twenty-five per cent of the work load as provided by Article 10 (b) of the National Vacation Agreement.

This Board cannot speculate as to what the true facts may be, nor can we reach out and reconcile the meager facts which are in conflict here as to enable us to arrive at a proper conclusion. The claim must be dismissed.

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 claim should be dismissed in accordance with the Opinion of the Board.

AWARD

Claim dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of July 1961.

Champlin-Shealy Co., Chicago, Ill.

Printed in U. S. A.

DISSENT TO AWARD 10007, DOCKET SG-9323

The absurdity of this award is summed up in the final paragraph of the "Opinion of Board" where the majority says:

"This Board cannot speculate as to what the true facts may be, nor can we reach out and reconcile the meager facts which are in conflict here as to enable us to arrive at a proper conclusion. The claim must be dismissed."

The fact of the matter is there was no doubt about the pertinent facts until during panel argument when the Carrier Member SPECULATED that no doubt some of the time set forth in the record was spent on other than performing the duties of the vacationing employe. The alleged conflict in facts did not exist despite the majority's assertion to the contrary.

Award 10007 does not dispose of the dispute on the basis of the facts and the rules; therefore, I dissent.

/s/ G. Orndorff
G. Orndorff
Labor Member