

Award No. 10846

Docket No. SG-10088

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, 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) The Carrier violated and continues to violate the Signalmen's Agreement when it refused and continues to refuse to permit Signal Maintainer G. L. Choate and Signal Helper C. W. Stephens to register off-call at times when they desire to not be available for calls.

(b) The Carrier now be required to compensate Signal Maintainer G. L. Choate and Signal Helper C. W. Stephens at their respective overtime rates of pay for all hours after October 8, 1956, for which they requested to register off-call and were denied the right by the Carrier. (Carrier's File No. G-357-18, G-357)

EMPLOYES' STATEMENT OF FACTS: Under date of September 8, 1953, the Carrier issued Bulletin Sig 33, advertising for bids a position of Signal Maintainer with headquarters at Belleville, Illinois, and assigned hours of 7:00 A.M. to 4:00 P.M., with Saturday and Sunday as rest days.

Claimant G. L. Choate submitted bid for the position advertised in Bulletin Sig 33, and under date of September 18, 1953, the Carrier issued Bulletin Sig 33A, awarding the position to claimant Choate.

Under date of August 27, 1954, the Carrier issued Bulletin Sig 17, advertising for bids two Signal Helpers' positions, one at Belleville, Illinois, and one in Signal Gang No. 17, and listed the Belleville, Illinois, position as No. 1 on the bulletin. Claimant C. W. Stephens submitted bid for the Signal Helper position No. 1 with headquarters at Belleville, Illinois, and assigned hours of 7:00 A.M. to 4:00 P.M., with Saturday and Sunday as rest days. Under date of September 7, 1954, the Carrier awarded the position to claimant Stephens by Bulletin Sig 21.

From the above it is readily apparent that Claimants Choate and Stephens bid for and were assigned as Signal Maintainer and Signal Helper respectively

The stipulation "specific occasions" contained in Rule 18(a), certainly cannot be interpreted to mean other than what it actually states as evidenced by the obvious intent. If the stipulation was not intended by the parties, such wording would not have been used in the context of the rule.

Furthermore, if the intent of the rule was as the employees contend, viz; that the rule permits them to register "off call" any time they desire and as often as they desire — there obviously would have been no need for the stipulation in the rule and the rule might have read: "If they desire to be off call they will so advise the person designated for that purpose."

It is a recognized principle of law that when an agreement is subject to both a sensible and non-sensible interpretation, the sensible interpretation will apply.

It has not been the practice to interpret the rule as the employees are now attempting to interpret it.

Carrier submits that in view of the provisions of Rule 18(a), the obvious intent of the provisions, coupled with the fact the past practice under the rule has been contrary to what the employees now contend, there is no contractual basis for the claim and same should, therefore, be denied.

OPINION OF BOARD: Claimants, Signal Maintainer and Signal Helper respectively, with headquarters at Belleville, Illinois and assigned work hours 7:00 A. M. to 4:00 P. M. Monday through Friday, registered "off call" all hours outside of their regular assigned work hours from September 4 to October 26, 1956. On October 8 Carrier's Signal Supervisor advised Claimants that their registering off call consecutively every day could not be classified as a "specific occasion" and that "such requests cannot be granted, without good reason for doing so." Claimants responded that according to their interpretation of Rule 18(a) of the Agreement between the parties they could register off call any time they so desired outside of their regular work hours and their reasons for doing so were not within the realm of Carrier's business, and they registered off call from 4:00 P. M. Friday, October 26 until 7:00 A. M. Monday, October 29. Carrier thereupon advised them it refused to allow them to be off call that week-end. Claimants now responded they would remain available for duty over the week-end and then claimed punitive rate for all amounts of time they were or would be ordered on call. Carrier refused compensation for the period unless Claimants were called on trouble. Subsequently, like claims were filed, consolidated into and made a part of the running claim under consideration.

Rule 18(a) of the Agreement between the parties effective February 16, 1949 as revised to October 1, 1950, provided as follows:

"(a) Employees assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered as available and will be called for service to be performed on their assigned territory and will respond as promptly as possible when called."

Employees maintained that under Rule 18(a) Claimants had the right to register off call for any and all hours outside their regular assigned work hours; Carrier had no right to deny this to Claimants or decide when the occasion was a "specific occasion"; and whenever Carrier did in fact deny

the right Claimants were performing service for Carrier—at least during hours prior and subsequent to their regular assigned work hours, other than Sundays and holidays—for which they were entitled to compensation at punitive rates pursuant to Rule 17(b) providing the same to employees “notified or called to perform service” in certain cases.

Carrier maintained that by a proper interpretation of Rule 18(a) the term “specific occasions” could not be construed as permitting employees to register off call all hours not included in their work assignments on a consecutive day basis. Carrier pointed out that previous to a revision of Rule 18(a) in February 1949 the pertinent provision of the “Subject to Call” rule (Rule 19 of the Agreement effective November 1, 1929) was as follows:

“Employees who are subject to call because of the requirement of the service will notify the person designated by the management where they may be called and will respond promptly when called.”

The change made in the provision, Carrier asserted, was to permit employees to mark off call occasionally and not as Employees were attempting to interpret it. If it were not the purpose to limit off call to something less frequent than every day, there would be no reason for inclusion of the phrase “on specific occasions”, Carrier argued.

It was stated in behalf of Carrier that since maintenance and proper functioning of its signal system was an essential cog in the operation of the railroad it was entitled to know signal employees in maintenance positions would be available and where they could be called to take care of emergency work. Accordingly, it was argued that if Employees’ position were sustained all signal employees could act in the same manner as Claimants and no employee would be available and subject to call—an absurd and unreasonable result.

In the opinion of the Board, the position of Carrier with respect to the proper interpretation of the phrase in Rule 18(a) “on specific occasions” should prevail. This interpretation is supported by the circumstance that the phrase was added upon an amendment of the “Subject to Call” rule—if it were not the purpose to limit off call to something other than every day, inclusion of the expression would be an idle gesture. Furthermore, carried to its logical extreme, the construction urged by Employees could frustrate the purpose of Rule 18(a) by sanctioning the registering of off call by all signal department maintenance employees at the same time, leaving none available and subject to call. The claim must be denied.

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

That the parties waived oral hearing;

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 denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schuily
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1962.