

Award No. 10854

Docket No. SG-10049

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, 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 that:

(a) The Carrier did not properly compensate Signal Testman R. J. LaFoe for services rendered from 12:01 A. M. to 2:30 A. M. on Sunday, October 7, 1956, in accordance with Rule 17 and other provisions of the Signalmen's Agreement.

(b) The Carrier now compensate Signal Testman R. J. LaFoe for two hours and thirty minutes at the double-time rate of pay, which would be \$4.588 per hour. (Carrier's File L-130-78)

EMPLOYEES' STATEMENT OF FACTS: The claimant, R. J. LaFoe, is regularly assigned as Signal Testman with assigned hours of 8:00 A. M. to 5:00 P. M., with assigned headquarters at El Reno, Oklahoma. Claimant LaFoe, being a monthly rated employe, is paid and governed by Rules 61, 62, and 63, for 313 eight-hour days per calendar year, performing only emergency service on the sixth day of his assigned work week, which is Saturday, and for all other service on his assigned rest days (Saturday and Sunday) and holidays, the rules applicable to other employes apply.

Prior to 5:00 P. M., on Saturday, October 6, 1956, claimant LaFoe was called to perform emergency service account of train derailment near Kingfisher, Oklahoma, and worked continuously until 2:30 A. M., October 7, 1956.

Since claimant LaFoe's regularly assigned working hours for which he is compensated six days per week, 52 weeks per calendar year, commence at 8:00 A. M., and having completed 8 hours of compensated service on October 6, 1956, prior to being called for the emergency service prior to 5:00 P. M. that date, at 12:01 A. M., October 7, 1956, claimant LaFoe had completed 16 hours of continuous compensated service in the 24-hour work period of his assignment and therefore was entitled to double-time rate of pay from 12:01 A. M., to 2:30 A. M., October 7, 1956, in accordance with Rule 17 of the Signalmen's Agreement.

over 16 continuous hours under the provisions of the rule before double time accrues. The claimant actually performed work only from 5:00 P. M., October 6 to 2:30 A. M., October 7, 1956. In fact, from 12:00 Midnight, October 6 to 2:30 A. M., October 7, 1956, it was his rest day and only time and one-half payment is due for rest day work under Rules 17 (c) and 18. No overtime whatever is due on the six days of his regular assigned week which includes his standby day.

For the above reasons we respectfully request your Board to deny the claim of the employees.

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

OPINION OF BOARD: The Claimant, R. J. LaFoe, was regularly assigned as signal testman with assigned hours of 8:00 A. M. to 5:00 P. M., with headquarters at El Reno, Oklahoma. Claimant LaFoe, being a monthly rated Employee is paid for 313 eight-hour days per calendar year, performing only emergency service on the sixth day of his assigned work-week, which is Saturday. Around 5:00 P. M. on Saturday, October 6, 1956, Claimant LaFoe was called to perform emergency service on account of a train derailment near Kingfisher, Oklahoma, and worked continuously until 2:30 A. M. October 7, 1956. This claim is that the Carrier now be required to compensate signal testman R. J. LaFoe for two hours and thirty minutes at the double time rate of pay for the work that he performed from 12:01 A. M. to 2:30 A. M. on Sunday, October 7, 1956.

It is the position of the Claimant that 5:00 P. M. on Saturday, October 6, 1956, he had completed eight hours of **compensated service** on October 6, prior to being called for the emergency service around 5:00 P. M. and that at 12:01 A. M., on October 7, 1956, Claimant LaFoe had completed sixteen hours of continuous compensated service in the twenty-four hour work period of his assignment and therefore is entitled to double time rate of pay from 12:01 A. M. to 2:30 A. M. October 7, 1956, in accordance with Rule 17 of the Signalmen's Agreement.

It is the position of the Carrier that for this Employee Saturday, October 6, 1956 was a standby day and he did not work that day until he was called to the derailment at Kingfisher, Oklahoma, to perform work at about 5:00 P. M.; that he performed work only from 5:00 P. M. October 6, 1956, to 2:30 A. M. October 7, 1956, and that he performed no work from 8:00 A. M. to 5:00 P. M. on October 6, 1956, within the meaning of the contract. Carrier claims that his monthly salary covered payment for emergency service from 5:00 P. M. to 12:00 midnight and that he was allowed pay at the time and one-half rate from 12:00 midnight to 2:30 A. M. on Sunday, October 7th, which was his rest day.

It is not necessary to decide the procedural question raised by the Carrier because of the decision of the Board on the merits of the case.

Rules 61, 62 and 63 appearing at page 45 of the Agreement, have been quoted in the briefs filed by both parties so they will not be repeated in this opinion, but it is obvious from a careful reading of Rule 62, that an eight-hour per day assigned five days per week for monthly rated signal maintainers is intended. Paragraph two of Rule 62 reads in part as follows:

“ . . . no overtime is allowed for time worked in excess of eight (8) hours per day on the regularly assigned five (5) days per week the employe is scheduled to work, . . . ” (Emphasis ours.)

Therefore, it was contemplated that the Employe would actually work five days a week. Then the paragraph goes on to say:

“ . . . nor on the first scheduled **rest day** (6th day) of the work-week or holidays; . . . ” (Emphasis ours.)

So, therefore, it was contemplated that on the sixth day of the week he would be resting and not working. Later on the rule states that the Employe will not be required to perform ordinary maintenance or construction on the sixth day and that only emergency service could be required. In other words, he is actually paid for a six day week on the basis of Rule 62, but he is only required to work five days, and the sixth day is a rest day.

Webster's Dictionary defines work as a verb, “to exert oneself in order to do or to make something; to do work; labor; toil.”

It is contemplated by the Agreement that on the sixth day he is resting and not working.

It is the opinion of this Board that the Rule means actual work. In this case the Employe was not required to perform any actual work until about five o'clock of the evening in question. We have analyzed the awards cited by both parties, the contract and the facts in this case and it is our decision that the double time rates apply only after sixteen hours of actual work have been performed.

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 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 19th day of October 1962.