

Award No. 11282
Docket No. SG-10824

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Texas and Pacific Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Articles 6 and 10(b) of the National Vacation Agreement of December 17, 1941, as amended, when it failed to provide proper vacation relief workers on the following listed signal maintenance territories:

Maringouin, La.....July 22 through August 10, 1957.
Gladewater, Texas..... July 22 through August 10, 1957.
Pecos, Texas.....July 22 through August 10, 1957.
Midland, Texas.....July 29 through August 17, 1957.
St. James, La.....July 29 through August 17, 1957.
Longview, Texas..... August 12 through August 31, 1957.
Sweetwater, Texas.... August 12 through August 31, 1957.
Plaquemine, La.....August 12 through August 31, 1957.
Hollywood, La.....August 12 through August 31, 1957.
Arlington, Texas..... August 12 through August 31, 1957.

(b) The blanking of signal maintenance positions be discontinued at once and that relief workers be furnished, as has been the practice for many years.

(c) The following listed employees, who normally would have performed this work, be paid the difference in pay they received as hourly-rated Signalmen (\$2.296 per hour) and the pay they would have received had they been allowed to relieve the monthly-

rated Signalmen's positions listed in part (a) of this claim (\$474.59 per month):

H. E. Blackburn	M. P. Farnsworth, Jr.
G. N. Kent	R. D. Walker
J. H. Kent	D. L. Cooner
C. D. Fant, Jr.	M. F. Eubanks
D. A. Bart	C. K. Thomson

[Carrier's File No. T-30900]

EMPLOYEES' STATEMENT OF FACTS: It has been the practice on this property under current agreement rules since the effective date of the National Vacation Agreement in 1942 for this Carrier to furnish relief workers for signal maintenance positions when the regular assigned Signal Maintainer was granted a vacation period.

Commencing on July 22, 1957, the Carrier discontinued furnishing proper relief for signal maintenance positions and required that the Signal Maintainers assigned to the territory on each side of the vacationing employee's territory assume the responsibility for the vacant signal maintenance position by answering all emergency calls during regular working hours and after regular working hours, each performing certain regular work and duties one day during the week, in addition to keeping up the work on their own respective territories.

Prior to July 22, 1957, and subsequent to 1942, it has been the accepted practice to fill the signal maintenance position of a vacationing employee with a senior Signalman assigned to a gang working in the immediate vicinity of the vacancy. If the senior Signalman did not accept the assignment, it was passed on down in seniority order to the other Signalmen and has in some cases been assigned to senior Assistant Signalmen.

As a result of this action of the Carrier in blanking signal maintenance positions while the incumbents were on vacation, General Chairman J. J. Morris filed a protest and claim in behalf of the ten claimants, who are all qualified Signalmen, and who have been used many times to fill such vacancies during vacation periods. The claim and protest were filed by General Chairman J. J. Morris with Mr. J. L. Weatherby, Signal Engineer, under date of September 3, 1957, in a letter which read as follows:

"It is the position of this Organization that the Vacation Agreement has and continues to be violated when the Company put into effect a policy of blanking signal maintenance positions when the regular assigned signal maintainer is granted a vacation period.

From the effective date of the Vacation Agreement in 1942, until July 22, 1957, it was the policy to furnish a relief worker for signal maintenance positions when the regular assigned signal maintainer was granted a vacation period. Effective July 22, 1957 the maintainer on each side of the vacant position was instructed by the Signal Supervisor to assume one-half the territory of the vacant position by answering all emergency calls and one day each week perform routine maintenance work on the added territory traveling by motor

"As you were advised in conference, this company is agreeable to paying overtime as stipulated in Rule 19 of the agreement to a maintainer who is required to answer emergency calls on the territory of a vacationing maintainer during other than regularly assigned work hours."

Thus the Signal Engineer, going the second mile, offered to treat any calls for signal repairs or work on the adjacent territory as if they were for work that was not even covered by the agreement, and to make payments accordingly, in line with the rules and practices mentioned above, to the maintainer who was called; but the Brotherhood was not interested in burdens and would have none of that.

Instead, the Brotherhood has selected, as claimants, persons who performed no work whatever on the territory of the vacationer, or on the adjacent territories, but who were fully employed elsewhere making less money; and the Brotherhood demands that those claimants be paid as if they had been used as vacation relief men, and as if they had been required to work full time in place of the vacationing signal maintainers who are involved in this case. The jobs were not in fact filled because a relief worker was not necessary. Most of the work was not performed by anyone at any time.

By seeking extra pay, for work that was not performed at all, during hours during which there was not even anyone present on the territories involved, the Brotherhood clearly shows that the real complaint is that we failed to create additional jobs for workers, whom we did not need, to perform work which was not needed nor performed at all. It is work which we found to be unnecessary, and did without, that the Brotherhood is claiming in this case. Thus it is clear that the Brotherhood's purpose, and the present claims, are contrary to the plain and declared intent of the Vacation Agreement, as well as of the Awards already cited.

On the basis of the foregoing, the Carrier respectfully requests the Board to dismiss or deny all claims involved in this case.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of Carrier's position has been presented to the employees or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier failed to provide vacation relief workers to fill the positions of a number of monthly-rated Signalmen while the latter were on vacation. Signal Maintainers assigned to the adjoining territories were required to cover a portion of the vacationing Maintainers' territories one day each week, "checking all case fuses, bond wires, batteries, etc."

Petitioner alleges that performing this work was a burden on the Maintainers of the adjoining territories and also that the vacationing Maintainer was burdened when he returned to service, in violation of Article 6 of the Vacation Agreement. Petitioner also alleges that more than the equivalent of 25% of the workload of each of such vacationing employees was distributed among the Maintainers of the adjoining territories in violation of Article 10(b) of the Vacation Agreement. Carrier denies both of these allegations.

Petitioner has failed to prove that Maintainers on the adjoining territories were burdened, or that the vacationing Maintainers were burdened after they returned from vacation; hence we must conclude that Article 6 of the Vacation Agreement was not violated.

As proof that more than the equivalent of 25% of the workload of each such vacation employe was distributed to the Maintainers of adjoining territories, Petitioner places in evidence in its Position of Employes a letter in which the General Chairman advised the Manager of Personnel:

"We also pointed out in conference that the Signal Supervisor's instructions required these adjoining Maintainers to work one day each week on the blanked positions. Each of these employes made Job Reports showing that eight hours of work per week was performed on the blanked positions, as per instructions. These Job Reports were accepted by the Signal Supervisors and the Auditor of Expenditures. These Job Reports were also shown to you in conference."

This statement regarding the Job Reports is not denied by Carrier. There is no other evidence of the actual time spent working on the territory of the vacationing Maintainers by the Maintainers of the adjoining territories, except Carrier's explanation that part of the time would have been spent in traveling over their own territory to reach the territory of the vacationing employe. Even after deducting a reasonable amount of time for traveling, it appears that in each case the Maintainers on the territories adjoining that of each such vacationing employe worked between 12 hours and 17 minutes and 16 hours per week on the territory of the vacationing employe. It thus appears that in each case more than approximately 25% of the workload of the vacationing employe was distributed to the remaining employes and therefore Article 10(b) was violated.

Even if Carrier had assigned a relief worker, it would nevertheless have been entitled to blank the position of each vacationing employe on those days when relief was not necessary (see Awards 10758 and 11154); therefore, in each case the claim is valid only for those dates on which a Maintainer of an adjoining territory actually performed service on the territory of the vacationing employe.

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 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 violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1963.