

Award No. 11859
Docket No. SG-10893

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The Southern Pacific Company violated the current Signalmen's Agreement dated April 1, 1947 (Reprinted August 1, 1950 including revisions), particularly Rules 13 and 8-E.

(b) Signalman-Relief Signal Maintainer W. J. Austin, headquarters San Jose District, Coast Division, be paid the difference between the straight time rate paid and that of time and one-half for August 26, 1957, which constitutes the seventh day worked in one week.
[Carrier's File: SIG 125-84]

EMPLOYES' STATEMENT OF FACTS: On Monday, August 5, 1957, Signalman W. J. Austin was working his regular assignment, which was Signalman-Relief Signal Maintainer, San Jose District, Coast Division.

On Tuesday, August 6, 1957, the claimant began relieving a vacationing Signal Maintainer, whose assigned rest days were Sunday and Monday, and worked that position eight hours daily until August 10, 1957, inclusive. Inasmuch as August 10 was the claimant's sixth consecutive work day, he was allowed compensation at time and one-half for that day. August 11 and 12 were the claimant's rest days on that position and he worked the position the following five days, August 13 to 17, inclusive, had two rest days, August 18 and 19, and continued to work the assignment August 20 to 24, inclusive, the latter date being the last vacation date of the position he had been relieving since August 6, 1957. On August 25, 1957, the claimant was allowed a rest day. On August 26, 1957, the claimant began relieving another vacationing Signal Maintainer, for which day he was compensated at the straight-time rate.

A formal claim was filed with Signal Supervisor J. L. Maze by Local Chairman W. J. Stephenson under date of September 11, 1957, as follows:

"As Chairman of the Local Committee I have been instructed to present this claim in behalf of Signalman-Relief Signal Maintainer

Thus, an analysis of the case discloses that petitioner is taking a hopelessly inconsistent position with respect to the period embraced in claimant's work week — petitioner is attempting to promiscuously shift the period embraced by claimant's work week back and forth in an effort to create penalties. It is well established law that an agreement must be given a consistent interpretation and should be so construed as to avoid creation of penalties.

CONCLUSION

Carrier respectfully asks that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employe and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record here shows that the Claimant, during the period August 6, 1957, through August 25, 1957, relieved Signal Maintainer Jacop whose work week was Tuesday through Saturday, rest days Sunday and Monday, and during the period August 25th through September 1st he relieved Signal Maintainer York, whose work week was Monday through Friday, rest days Saturday and Sunday. The claim is for the difference between straight and overtime pay for the date of August 26 on the basis this was a rest day earned in the filling of Jacop's position.

Rest days attach to positions filled, and since Jacop's position called for rest days of Sunday, August 25 and Monday, August 26, Claimant's work on the latter date was rest day work for which premium is due. This holding accords with the 40-Hour Week Agreement and prior awards of this Board.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.