

Award No. 12769
Docket No. SG-12158

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Air Line Railroad Company:

In behalf of Mr. R. E. Oglesby for 9½ hours overtime account not being permitted to work in his signal gang on Saturday, August 8, 1959, and for compensation for all time lost on August 27, 28, and 29, 1959, when his work week was reduced and Mr. Oglesby was only permitted to work two days during that week.
[Carrier's File: G-60-Sig-4.]

EMPLOYEES' STATEMENT OF FACTS: Mr. R. E. Oglesby was regularly assigned to a position in Signal Gang No. 11 which was working on a rail relay job at Tucker, Georgia. The regular assigned work week of the employees of Signal Gang No. 11 was from Monday through Friday with rest days of Saturday and Sunday. During the latter part of July 1959, Mr. Oglesby bid for and was assigned to the temporary position of Assistant Signal Maintainer at Winter Haven, Florida. The regular assigned work week of the Assistant Signal Maintainer position at Winter Haven, Florida, was from Tuesday through Saturday with rest days of Sunday and Monday. On Friday, August 7, 1959, Acting Foreman W. O. Judy received a wire from Signal Supervisor Ralph Dunham advising Mr. Oglesby to report for work at Winter Haven on the temporary Assistant Signal Maintainer position on Tuesday, August 11, 1959, the first day of the work week of the position.

At the time Acting Foreman Judy received the wire advising Mr. Oglesby to report to work at Winter Haven, it was known that Signal Gang No. 11 was going to work on Saturday, August 8, 1959. In view of the fact that Mr. Oglesby did not have to report to Winter Haven until Tuesday, August 11, 1959, he and Acting Foreman Judy asked Assistant Signal Supervisor Goodwin for permission to allow Mr. Oglesby to work with Signal Gang No. 11 on Saturday, August 8, 1959. Mr. Oglesby was denied the right to work in his Signal Gang No. 11 on Saturday and, therefore, was deprived of nine and one-half (9½) hours overtime that the gang worked on that day. The Carrier

vacancy at a distant point. The Company advertised such temporary vacancy to all signal employes (who have system seniority) and Mr. Oglesby submitted a bid asking for the temporary vacancy. As he was the senior bidder and, of course, was qualified to fill the lower class position of Assistant Signal Maintainer, the Company had no alternative but to award the temporary vacancy to him. It is fundamental that when an employe exercises his seniority and bids in an assignment, as was done in this case, he assumes all of the conditions of such assignment. Of course, one of the conditions of such a temporary vacancy is that it embraces a position that belongs to a regular assignee who is temporarily absent therefrom and will terminate and cease to exist upon the return thereto of the regular assignee.

As the record shows, Mr. Oglesby knew when the regular incumbent (owner of the position) would return thereto. Having bid for and being assigned to such temporary vacancy, it was his responsibility to protect it so long as such vacancy existed and he was assigned thereto. There is no rule in the agreement, and none was cited, requiring the Company to release him from the assignment prior to its termination to suit his convenience, and likewise none requiring the Company to keep him on the assignment after it terminated to suit his convenience, particularly when he had a regular and higher paid job to return to. How can the Company be accused of being unreasonable in not blanking the job for two days to suit his convenience? If this position was not needed it would not have been filled during the suspension of the regular incumbent. Neither can the Company understand how it could be expected to pay two men on the same job when only one was needed simply to accommodate a man who of his own volition left a regular higher paid job to temporarily work a lower paid job. This would certainly be an extra expense and something the agreement does not specify the Company should incur. As the record shows, the General Chairman argued that the Company should have penalized itself and arranged so that claimant would have lost no time in getting back to his regular job as a matter of equity. Of course, the provisions of the agreement must govern and there was no justification whatever for making the payment claimed for lost time. Also, Mr. Oglesby could have returned to his regular job in time to have worked Friday, August 28th, but elected not to do so.

As to his claim that he should have been worked overtime with the rest of the gang on Saturday, August 8th, prior to going to the temporary vacancy in Florida, there was no contractual requirement that he be worked such overtime. Rule 16(c) clearly provides that it is not mandatory that the entire gang be worked in overtime service. The General Chairman contended that claimant could have, with permission, worked the overtime on that date; however, the entire gang was not needed, he did not stand to be worked, and he was not the only one not worked.

The claim for pay on the dates referred to is without any foundation and support, and the Brotherhood presented nothing whatever to substantiate the claim.

OPINION OF BOARD: While assigned to and working regular position of Signaller, Signal Gang No. 11, at Tucker, Georgia, assigned work days Monday through Friday, Mr. R. E. Oglesby bid in an advertised temporary vacancy of Assistant Signal Maintainer, with headquarters at Winter Haven, Florida, with assigned work days Tuesday through Saturday. Arrangements were made on Friday, August 7, for him to report for work at Winter Haven Tuesday morning, August 11, 1959, which he did.

Inasmuch as the regular incumbent, who was off under suspension would report back to work on Thursday, August 27th, Mr. Oglesby was notified that he would be released therefrom at close of work Wednesday, August 26th, returning to his regular assignment as Signaller at Tucker, Georgia. He was released in early afternoon Wednesday, August 26th, and reported for work at Tucker, Georgia, Monday, August 31st.

It being known on August 7 that the gang employees would work on their rest day, August 8, the Claimant requested that he be permitted to work with the gang on that day; the request was denied.

The Carrier contends that the work performed on August 8 was performed with a reduced gang and that the Claimant, being the junior employee of his class, was, therefore, not entitled to work. We note, however, that all gang employees who desired work, excepting the Claimant, were permitted to work. We also note that there is no contention made that allowing him to work August 8 would have prevented his reporting to his temporary maintenance position on time. We find that the Claimant was improperly denied work on Saturday, August 8, and should be paid nine and one-half (9½) hours at overtime rate therefore.

A claim is also presented for August 27, 28, and 29, 1959, because the Claimant worked only two (2) days during that work week due to being displaced on his temporary position by the return of the permanent incumbent. We find that the Claimant necessarily lost August 27 because of returning to his permanent assignment. There is no adequate showing that he could not have reported for work on August 28, and August 29 was a rest day of his permanent (and now only) position. This portion of the claim is denied.

We confine our decision to the facts and circumstances of this claim only.

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.

AWARD

Claim sustained in part and denied in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.