

Award No. 13175

Docket No. SG-12338

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

In behalf of Signal Maintainer W. J. Liden, Chicago, Illinois, for five (5) days' pay in addition to what he has already been paid for June 1, 2, 3, 4, and 5, 1959, account he was required to suspend work on his own assignment, which was Washington Heights, Illinois, and work in Gang No. 3 in violation of the current Signalmen's Agreement, particularly Rule 14 and the Memorandum of Agreement dated September 9, 1954, covering vacation and other relief assignments. [Carrier's File: L-130-165]

EMPLOYES' STATEMENT OF FACTS: Signal Maintainer Yuknis is regularly assigned to a signal maintenance territory with headquarters at Washington Heights, Illinois.

Signal Maintainer Yuknis was on vacation from May 25, 1959, until June 5, 1959, inclusive, during which time his position was blanked.

Mr. W. J. Liden is regularly assigned to a Signal Maintainer relief position with home station at 61st Street.

The relief position held by Signal Maintainer Liden was established pursuant to a Memorandum of Agreement signed by the representatives of this Carrier and the Brotherhood on September 9, 1954, for the purpose of providing a combination of vacation and other relief of Signal Maintainers in the Chicago Terminal District (25th St. to M.P. 45).

The signal maintenance position at Washington Heights held by Signal Maintainer Yuknis, which was blanked during the period of May 25, 1959, to June 5, 1959, while he was on vacation, is located within the confines of the Chicago Terminal District (25th St. to M.P. 45).

A.M. to 4:00 P.M., to tell an employee to go home at 11:00 A.M. and return at 5:00 P.M. and work to 10:00 P.M. to make a total of eight hours, all at pro-rata rate. That is what absorbing overtime under Rule 14 means. Such condition is not in the present case.

As there was no work performed on the position of the vacationing employee (Yuknis), and hence that vacancy not requiring a relief employee, there can be no question here of the claimant being suspended during regular working hours to absorb overtime. He actually worked during regular working hours on Gang 3 and he was neither suspended from the vacation vacancy (because it was not filled by anyone), nor from any regular working hours. His status was merely that of a relief employee who could be used, as here, in Gang 3 when vacation work was not available.

We submit also that the claimant worked full eight hours each day on Gang 3, June 1 to 5, 1959, and even if the Carrier had felt it necessary to work the vacationing employee's position and used the claimant thereon, he would still only have received the same amount of pay as on Gang 3, for obviously he could not have worked both positions during the same working hours.

On basis of the facts and evidence recited above, there is no merit to employees' claim for additional pay during claimant's regular assignment and it should be denied.

OPINION OF BOARD: While Signal Maintainer Yuknis was on vacation Carrier blanked his position. During this period Claimant, a relief maintainer, was used as a signalman instead of being used as relief for Yuknis. The Organization regards this as a violation of its agreement with Carrier, dated September 9, 1954, which established the relief position. According to its point of view, the relief maintainer must be used if there is vacation work available and there is vacation work when a regular employee goes on vacation.

Claimant's case depends on whether Carrier is obliged to fill every vacationing employee's position while he is away. The Organization has not cited any provision of the Agreement which requires Carrier to fill such a position. It is within Management's prerogative to fill or not to fill a position unless some rule restricts this right.

The Organization relies on its Agreement of September 9, 1954 which begins:

"To provide a combination of vacation and other relief of signal maintainer . . ."

We do not read this Agreement to imply that Carrier is obligated to use the relief maintainer, but only to use him if necessary. The need to fill a job is wholly management's to decide unless there is agreement otherwise.

In other cases between the same parties similar to this, we have upheld Carrier's right to blank a position while incumbent is on leave of absence for illness (Award No. 12358, Dorsey), and when incumbent of a two day relief stint was used to fill a vacation vacancy (Award 12099, Dorsey). We hold that the principles therein announced are analogous to the case at hand.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1964.