

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 10, when it did not permit Mr. R. E. Floress to work on December 3 and 4, 1960, even though he had observed two rest days on November 30 and December 1, 1960.

(b) The Carrier should now be required to compensate Mr. Floress for eight hours' pro rata pay for each day, December 3 and 4, 1960, as they were regular work days of his old assignment and he did not assume the duties of the new assignment until December 5, 1960. [Carrier's File Case: F-1039]

EMPLOYEES' STATEMENT OF FACTS: Prior to the time this dispute arose, Mr. R. E. Floress, the Claimant in this dispute, was working as a Relief Signal Maintainer, with Wednesdays and Thursdays as rest days.

On Signal Bulletin No. 161-60 (Brotherhood's Exhibit No. 1) dated September 12, 1960, the Carrier advertised a special Signal Maintainer position, with Saturdays and Sundays as rest days. Mr. Floress was assigned to that position by Signal Bulletin No. 164-60 (Brotherhood's Exhibit No. 2) dated September 23, 1960.

Under date of November 30, 1960, the Carrier instructed Mr. Floress in writing (Brotherhood's Exhibit No. 3) to report for his new assignment December 5, 1960.

On December 6, 1960, the Brotherhood's Local Chairman presented a claim on behalf of Mr. Floress because he had not been transferred to his new assignment within fifteen (15) days after the close of the bulletin, as provided in Rule 66 of the current Signalmen's Agreement. That claim was handled to a conclusion on the property, without receiving a satisfactory set-

In other words, the Organization has presented two claims in behalf of Employee Floress in connection with the same incident or occurrence, and for the same dates, i.e., the instant claim for December 3 and 4, 1960 and the claim for the period October 8 through December 4, 1960 covered in Carrier's Exhibit "A", and in each of the two claims the Organization takes a position which is in direct opposition to the other.

On one hand the Organization has presented a claim (the claim covered in Carrier's Exhibit "A", i.e., in behalf of Employee Floress for the period October 8 through December 4, 1960) because Employee Floress was not transferred to his new assignment on the Special Signal Maintainer position within 15 days and on the other hand the Organization has presented a claim (the instant claim in behalf of Employee Floress for December 3 and 4, 1960) wherein they allege Employee Floress should have been allowed to perform service on his old assignment (Relief Signal Maintainer position) after the expiration of said 15 day period.

The Carrier submits that the Organization cannot properly go two ways in connection with this one incident or occurrence.

By this reference thereto the Carrier, for reasons as outlined herein, wishes to make our submissions in the case covered in Carrier's Exhibit "A" a part of the instant case.

Under the circumstances, and particularly in view of the position taken by the Organization in the claim in behalf of Employee Floress covered in Carrier's Exhibit "A", it is the Carrier's position that the instant claim is in no way supported by schedule rules or agreement and we respectfully request that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 5, 1960, Claimant R. E. Floress, was working as a Relief Signal Maintainer with Wednesday and Thursday as rest days. Claimant applied for a special Signal Maintainer position which had been bulletined by Carrier with Saturdays and Sundays as rest days and was assigned by Carrier to that position. Under date of November 30, 1960, Carrier instructed Claimant to report for his new assignment December 5, 1960. Carrier did not permit him to work Saturday and Sunday December 3 and 4, even though they were the last two regular work days of his old assignment which Claimant contends was in violation of Rule 10 of the Agreement pertaining to the "WORK WEEK".

Carrier asserted that Claimant was attempting to go two ways, having presented another claim under Rule 66 of the Agreement which pertains to the time within which an employee should be assigned after bulletining.

The instant claim involves an issue entirely different from that presented wherein it is claimed there was a violation of Rule 66. An award in this case would be in no way decisive of that claim nor would it preclude Claimant from proceeding with that claim.

Claimant is entitled to the workdays as well as the rest days of the position which he held and Carrier not having permitted him to work the last two days of his old assignment prior to December 5, 1960, a sustaining award is justified.

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 has been violated.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1965.