

Award No. 13866

Docket No. SG-13839

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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 Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 5, 8, 11, 14, 15, 17, 17(g-1), 17(k), 18, 19, 56, Seniority Rules, and an understanding of April 18, 1950 (said understanding confirmed by Carrier's letter of April 24, 1950), when, during September 1961 at Armourdale Classification Yard, Kansas, it established an additional first trick Signal Maintainer position with rest days Mondays and Tuesdays, tour of duty 8:00 A. M. to 12:00 Noon — 1:00 P. M. to 5:00 P. M., yet continued to maintain the original first trick Signal Maintainer position with rest days Saturdays and Sundays, tour of duty 6:00 A. M. to 10:00 A. M. — 11:00 A. M. to 3:00 P. M., and abolished the second trick Signal Maintainer position with rest days Saturdays and Sundays.

(b) The Carrier should compensate Signal Maintainer W. E. Werst for seven (7) hours at punitive rate of pay account his shift, which was actually second shift, did not immediately follow the first shift as required by Rule 8 (one hour of this punitive time is because he was not allowed twenty (20) minutes during the second shift for a meal period without reduction in pay). This claim to be paid him on the following dates, in addition to what he may already have been paid on these dates: September 20, 21, 22, 23, 24, 27, 28, 29, 30, October 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1961.

(c) The Carrier should also compensate Signal Maintainer W. E. Werst, the alleged so-called first trick Maintainer B, for eight (8) hours at straight time rate of \$2.626 per hour for the alleged so-called first trick A, for all Mondays and Tuesdays — September 25, 26, October 2, 3, 9, 10, 16, 17, 23, 24, 30, 31 and November 6 and 7 — and

all subsequent Mondays and Tuesdays that he is required to take as rest days. This portion of the claim is filed on a continuing basis for W. E. Werst, or any future assignees to this position, as long as there are any violations of the agreement rules or understanding.

(d) The Carrier should also compensate Signal Maintainer W. E. Werst, the alleged first trick Maintainer B, for eight (8) hours at punitive rate of pay for each Saturday and Sunday that he is required to work (as these should be his rest days), and because he is being required to violate Rule 14 in absorbing overtime on Saturdays and Sundays which rightfully belong to the original first trick.

He is also being worked in violation of Rule 15 as he is not working a five-day week in accordance with Rule 17 account no rest day relief man provided, and this portion of the claim is for September 23, 24, 30, October 1, 7, 8, 14, 15, 21, 22, 28, 29, November 4 and 5, 1961, and all subsequent dates until such time as rest day relief man is provided, and is filed on a continuing basis for all future assignees to this position.

(e) The Carrier should also compensate W. E. Werst, who held the second trick position before it was abolished, for eight (8) hours at the straight-time rate for all days that he is withheld from the original second trick position which he held until September 20, 1961. This portion of the claim is for September 21, 22, October 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, November 1, 2, 3, 6 and 7, 1961, and all subsequent dates for W. E. Werst or any future assignees until a rest day relief man is provided — this to be paid in addition to what he may already have been paid on these dates account of violation of Rules 14, 56 and others.

(f) The Carrier should compensate J. L. Snapp, the successful bidder for Signal Maintainer A position advertised on Bulletin No. 17 (temporary sixty days), for eight (8) hours at punitive rate of pay account the alleged first trick so-called B Maintainer worked his assigned rest days, Saturdays and Sundays — September 23, 24, 30, October 1, 7, 8, 14, 15, 21 and 22, 1961.

(g) The Carrier should compensate W. B. Taylor, who assumed the A assignment on October 23, 1961, for eight (8) hours at punitive rate of pay for all Saturdays and Sundays that the alleged first trick so-called B worked on his assigned rest days of Saturdays and Sundays — October 28, 29, November 4 and 5 — and for all subsequent Saturdays and Sundays that the alleged so-called first trick B is assigned to work on Saturdays and Sundays, the first trick Maintainer's rest days. This portion of the claim is filed on a continuing basis for W. B. Taylor or any future assignees as long as there is any violation of the agreement rules. [Carrier's File: L-130-241.]

EMPLOYEES' STATEMENT OF FACTS: Following the inception of the forty-hour work week rules effective September 1, 1949, one of the provisions of which is that five-day positions will have Saturday and Sunday as rest days, the Carrier established a staggered work week and made an assignment of overlapping signal maintenance territories which had previously been on a six-day assignment, which resulted in a portion of the signal maintainers having a work week of Monday through Friday and a portion of them having a

and performing 3 days of work which could properly be assigned to him under Rule 17, Section 2(e), that part reading with emphasis:

"All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under individual agreements * * *."

This is exactly what the fact was here.

The claim for unnamed claimants is totally invalid, and there is no basis for amounts claimed by the named claimants under any construction even if there was an agreement violation.

(Exhibits not reproduced.)

OPINION OF BOARD: In Bulletin 17, dated September 5, 1961, Carrier advertised an additional permanent Signal Maintainer position, first trick B at Armourdale, tour of duty 8:00 A. M. to 5:00 P. M. and rest days Monday and Tuesday. This Bulletin also advertised the original first trick position A on a temporary basis with tour of duty 6:00 A. M. to 3:00 P. M. and rest days Saturday and Sunday. Effective October 30, 1961, the assigned hours of the temporary position were changed to 8:00 A. M. to 5:00 P. M. On September 15, 1961, Carrier abolished the second trick Signal Maintainer position, tour of duty 3:00 P. M. to 11:00 P. M., rest days Saturday and Sunday.

The Brotherhood contends that the establishment of the first trick B Maintainer position is violative of Rule 17, Section 2(b) of the Agreement and maintains that Carrier is obligated, therefore, to establish Saturdays and Sundays as rest days since this is a five-day position. It also argues that the establishment of the second shift that does not immediately follow the first shift was a violation of Rule 8. It states that the purpose of Carrier's action was to avoid the punitive rate of pay for Saturday and Sunday work. It further asserts other violations of rules, including 5, 11, 14, 15, 18, 19 and 56, stemming from the manner in which the two positions were staggered and the conditions under which the occupants of the positions were required to work. Moreover, it supports its position with a letter of understanding of April 24, 1950 which established that hourly rate Maintainers must have rest days on Saturday and Sunday and monthly rate employees must have Sundays as rest days.

Since the adoption of the forty-hour work Agreement, this Board, in a number of awards, has considered issues similar to those involved in the instant dispute as the right of Carrier to stagger the two shifts and the right to assign members of a single group different starting times within designated periods in the Agreement. Where the work is required to be done seven days each week, as in the case under consideration the mainstream of awards have held that the work week may be staggered and the rest days may be other than Saturdays and Sundays. See Awards 10588, 10171 and 5545.

Numerous awards, including numbers 7053, 4851, 4194 and 13373 have held that Carrier has the right to start the work period of some members of the shift at different times than others. The only restrictions are that the assignments be permanent and that the starting time be consistent. Rule 12 of the current

Agreement supports Carrier's right to have different starting times for work for first shift of employees between 6:00 A. M. and 8:00 A. M.

Regarding Brotherhood's contention that the letter of understanding of April 24, 1950 established the work week from Monday to Friday and rest days on Saturday and Sunday, we find that this communication concerned a specific situation and was not intended to supersede the basic provisions of the Agreement which stem from the forty-hour work rules. Moreover, the letter clearly states that seven-day positions will be handled under Rule 16 (d), which is now Rule 17(d) of the current Agreement. In view of the fact that we have found that the instant dispute involves a seven day work week, Rule 17(d) is applicable and Carrier has the right to stagger the work week.

We therefore hold that the Agreement was not violated, and the claims are denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.