

Award No. 14073
Docket No. SG-14017

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, ROCK ISLAND & 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 that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 62, when it required Mr. G. E. Reig, a monthly-rated Signal Testman, to perform routine work on Saturday, January 13, 1962, the sixth day of his work week.

(b) The Carrier be required to compensate Mr. Reig for ten (10) hours at the punitive rate of pay which is \$4.131 per hour.

[Carrier's File: L-130-249]

EMPLOYEES' STATEMENT OF FACTS: The Claimant in this dispute, Mr. G. E. Reig, is a monthly-rated Signal Testman (an employe who is regularly assigned to and whose principal duties are the inspection and testing of signal appliances, apparatus, etc.), with headquarters at Fairbury, Nebraska. His normal work week is Monday through Friday.

A freight train derailed and destroyed a switch machine and signal at Atlantic, Iowa, on January 5, 1962. In order to get the railroad back in operating condition, a hand throw switch was installed, and circuits were installed to clear the main line signals so the CTC operator could handle the control of the signals from his CTC machine. This work was completed about 5:00 P. M. on January 8th, and this arrangement for the signals for the main track was used until January 13th.

A new switch machine with all the associated rods and other appurtenances arrived at the location on January 11th.

Claimant Reig was required to work ten (10) hours on Saturday, January 13, 1962, the sixth day of his work week, installing the new switch, and he submitted an overtime slip for ten (10) hours at the punitive rate of pay for that work, on the basis he was required to perform routine work on the sixth day of the work week in violation of Rule 62 of the current Signalmen's Agreement.

charge who is the Local Chairman, has advised me that these ties were sound and could have been used just as well as any other ties and Mr. Schoech is using this as a subterfuge to beat the signal testman out of his just dues which is the oldest trick in the book. Any signalman knows that these switch ties are always used to drag ballast out of a switch because they are long enough to do the job in one operation and will spread the ballast evenly over the entire switch with one drag; and then they are used to set the switch machines on, and they are not damaged in the least by this operation."

This is shown to be erroneous by the following statement of the Carrier in its Exhibit B:

"You were advised that the original switch ties were destroyed in the derailment and that the ties under the temporary hand-thrown switch were not standard head block ties and it was necessary to defer installation until the arrival of standard ties on Train 83."

This claim is without agreement support. It should be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The first issue here is whether Carrier violated Rule 62 in assigning certain work to Claimant G. E. Reig (a monthly-rated Signal Testman) on Saturday, January 13, 1962. Paragraph four of this Rule declares:

"Such monthly-rated employees will not be required to perform ordinary maintenance or construction on the sixth day of the work week. Only emergency service may be required on such sixth day, which will be the service necessary to restore the signal system to safe working order."

The facts may be summarized as follows: On Friday, January 5, 1962 a freight train was derailed at Atlantic, Iowa, destroying a switch machine, a signal, and a power switch. To get the railroad back in operation a hand throw switch was installed. Circuits were then installed to clear the main line signals so the CTC (Centralized Traffic Control) operator could control the signals from his CTC machine at Council Bluffs. The work was completed about 5:00 P.M. on Monday, January 8. This temporary arrangement for handling main track signals continued until replacement equipment was installed. On Thursday, January 11 a new switch machine with associated rods and appurtenances arrived at Atlantic; switch ties were delivered on Saturday, January 13. On Saturday Claimant was assigned to work ten hours installing the new switch.

Carrier suggests that in applying Rule 62 to the above facts the crucial word in the fourth paragraph is "restore," which word, it notes, is defined in the dictionary as "to bring back to, or put back into, the former or original state." Here, Carrier affirms, the emergency caused by the original derailment still existed until the new switch machine was set on the new switch ties. Restoration of the knocked out signal system could not be considered ordinary maintenance or construction. Derailments and the consequences thereof, Carrier asserts, constitute emergencies (Award 9394).

In Rule 62, however, the parties have defined what they consider to be emergency service for purposes of this provision, e.g. situations in which it

is proper to use a monthly-rated man on the sixth day. This Board, no less than the parties, is bound by such definition which declares emergency service to be "the service necessary to restore the signal system to safe working order." Note that the parties did not frame this definition in terms of service necessary to restore the signal system, which, in effect, is what Carrier suggests should be the interpretation. Rather, the critical phrase is "restore to . . . working order."

The contract does not specify what constitutes "safe working order" but, undoubtedly, the parties had in mind the safety of railroad personnel and passengers traveling on the line. Is there convincing evidence in this record, then, that the signal system was in unsafe working order on January 13? We think not. There is an assertion in Supervisor Weierhauser's March 24, 1962 denial letter that the system was not in safe working order "since a hand operated switch in CTC territory must be equipped with an electrical or mechanical lock by rules of ICC. This hand throw switch was not so equipped and in order to make the signal system safe the power switch was installed." This assertion was challenged by General Chairman R. A. Watkins in a May 31, 1962 appeal letter. Mr. Watkins noted in part: ". . . trains were being operated by signal indication and surely Mr. Weierhauser would not admit, particularly to the ICC, that they were operating trains by signal indication when it was not a safe operation, and he makes reference to certain ICC rules which he very well knows that there are exceptions to, and that the Rock Island installs all kinds of switches without electric locks and this is permissible under the ICC rules and they consider it a safe operation." This matter was not pursued further on the property. ICC Rule 136.410 (Chapter I, Part 136) — which, incidentally was not discussed on the property or in the submissions — is not dispositive of this question since, on the one hand it declares that hand operated switches shall be electrically locked in normal position, but on the other hand declares that (1) relief from such requirements will be granted upon adequate showing by the Carrier and (2) relief heretofore granted to any Carrier shall constitute relief to the same extent from such requirements.

Since the record does not establish by convincing proof that the signal system was unsafe on January 13, we must conclude that Carrier violated Rule 62 when it assigned Claimant Reig to work on Saturday, January 13, 1962. What, then, should be the remedy? Petitioner requests ten hours' pay at the punitive rate. Carrier urges that no compensation be granted since (1) Rules 17 and 18 provide for additional compensation only if Sunday service is performed, (2) Rule 62 contains no provision for extra compensation for sixth day work; (3) The Board, in prior awards, has denied compensation under similar circumstances (Awards 10766, 12637, 13020); (4) the Board has no authority to assess a penalty.

For the reasons set forth below, Petitioner's claim is sustained and Carrier's arguments rejected:

1. In Rule 62 Carrier contracted to allow men in Claimant's position to be at rest, although subject to call for specified purposes, on the sixth day of the work week. Work for any other purpose, therefore, was not part of Claimant's weekly assignment nor was it paid for by his monthly salary. Under these circumstances, by requiring Carrier to pay for the work per-

formed, we merely provide a remedy for its improper action; we do not assess a penalty.

2. While Rule 62 does not specify that any type of sixth day work will be compensated, that fact is not controlling since, clearly, the parties did not intend or contemplate that sixth day work be unjustifiably assigned.

3. The punitive rate is appropriate since the assignment here was analogous to a Sunday assignment (e.g., it was made at a time when the employee had a contractual right to be at rest).

4. Cited Awards are not in point. (Award 10766, for example, which involved these parties and a sixth day compensation claim, really concerned the question whether certain work was exclusively that of a Signal Maintainer.)

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1966.

CARRIER MEMBERS' DISSENT TO AWARD NO. 14073, DOCKET NO. SG-14017

Award 14073 is erroneous and we dissent.

The work performed by the Claimant on the sixth day of his work week could not properly be considered ordinary maintenance or construction under Rule 62 of the Agreement. Signal systems destroyed by wrecks or derailments cannot be termed ordinary happenings, and the restoration of such systems so destroyed could not properly be considered ordinary maintenance or construction. The Carrier had the right, within its managerial prerogative, to consider the derailment and the consequences thereof as an emergency (Award 9394).

The majority is in further error in attempting to read into the Agreement something that it does not contain in awarding Claimant additional compensation for service performed on the sixth day of his work week. Rule

62, covering monthly-rated signal maintainers, provides specifically that "no overtime is allowed for time worked in excess of eight (8) hours per day on the regularly assigned five (5) days per week the employe is scheduled to work, nor on the first scheduled rest day (6th day) of the work week. * * * " Additional compensation is provided for such monthly-rated employes only for work performed on Sundays. The incident giving rise to the claim did not involve work performed on Sunday. Awards of the Division are legion adhering to the principle that we are precluded from adding to, subtracting from, or modifying the provisions of any agreement. Adherence to this principle precluded the allowance of additional compensation for service performed by the Claimant on the sixth day of his work week.

P. C. Carter
R. E. Black
D. S. Dugan
T. F. Strunck
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