

Award No. 15061  
Docket No. SG-14594

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

George S. Ives, 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) Carrier violated the current Signalmen's Agreement, as amended, particularly a Memorandum of Agreement signed December 14, 1961, and Vacation Agreement dated December 17, 1941, including all the amendments thereto, when it failed to furnish a vacation relief worker on the Yukon signal maintenance territory while the regularly assigned Yukon Signal Maintainer, W. L. Stickley, was on vacation for a three-week period beginning November 12, 1962.

(b) Carrier should now be required to compensate Signalman L. W. Egger, who usually relieves the Yukon Signal Maintainer while he is on vacation, for an amount of time equal to that spent by signal employes on the Yukon signal maintenance territory during the period in question, this to be paid to him at the punitive rate of pay (his regular rate was \$2.7288 per hour), and in addition to what he has already been paid. [Carrier's File: L-130-271]

**EMPLOYEES' STATEMENT OF FACTS:** M. L. Stickley, the regularly assigned signal maintainer on the Yukon, Oklahoma, signal maintenance territory, was on a 3-week vacation beginning November 12, 1962. Signalman L. W. Egger usually relieves this job while the regular man is on vacation, but in this case no vacation relief worker was furnished. However, during Mr. Stickley's vacation, other signal employes worked on the Yukon territory as follows:

November 13 - three (3) hours straight time by Eugene Haberman.  
November 14 - Four (4) hours straight time by Eugene Haberman.  
November 20 - eight and one-fourth (8¼) hours' overtime by M. D. Stowe.  
November 21 - three (3) hours' straight time by E. E. Bouteller.  
November 23 - seven and one-half (7½) hours' overtime by M. D. Stowe.  
November 23 - one (1) hour straight time by C. E. Bouteller.  
November 24 - ten (10) hours' overtime by M. D. Stowe.  
November 26 - three (3) hours' straight time by M. D. Stowe.

**OPINION OF BOARD:** Carrier failed to provide a vacation relief worker on the Yukon signal maintenance territory to fill the position of the regularly assigned Signal Maintainer while the latter was on vacation. Signal employees assigned to the adjoining territories were required to cover a portion of the vacationing Signal Maintainer's territory and duties. Petitioner filed the instant claim, under date of January 18, 1963, on behalf of Claimant, who had relieved the vacationing Signal Maintainer in the past.

Petitioner contends that those signal employees required to cover the territory and duties of the vacationing Signal Maintainer were burdened because of Carrier's failure to provide a relief worker in violation of Article 6 of the Vacation Agreement. Petitioner also alleges that more than the equivalent of 25% of the work load of the vacationing employee was distributed among the remaining signal employees in violation of Article 10 (b) the Vacation Agreement. Carrier denies both of these allegations.

Article 6 of the Vacation Agreement does not require a vacation relief worker unless the lack of one would burden other employees or the vacationing employee on his return. Petitioner merely asserts that other employees, who performed work on the territory of the vacationing employee, were burdened without offering any probative evidence in support of its assertion. Carrier denies that any employees, including the Claimant and the vacationing employee, were burdened during the period in question. Thus, Petitioner has failed to prove that the remaining signal employees were burdened or that the vacationing employee was burdened after he returned from vacation and we must conclude that Article 6 of the Vacation Agreement was not violated. Award 11282.

Petitioner offers as proof that more than the equivalent of 25% of the work load of the vacationing employee was distributed to remaining signal employees, the original claim on the property, which is contained in a letter to Carrier dated January 18, 1963. (Brotherhood's Exhibit No. 1.) Said letter specifically sets forth times and dates during which two named signal employees actually worked on the Yukon territory, excluding travel time, between November 18, 1962 and November 30, 1962, while the regularly assigned signal Maintainer was on vacation. Total straight time hours amounted to (36) thirty-six hours and total overtime amounted to (28 $\frac{3}{4}$ ) twenty-eight and three-fourths hours. The parties agree that the regular work week of the vacationing employee is (40) forty hours and thus the aggregate of three weeks' vacation is (120) one hundred and twenty hours.

Petitioner contends that Rule 10 (b) of the Vacation Agreement was violated because a total of (64 $\frac{3}{4}$ ) sixty-four and three fourths hours of work was performed on the Yukon territory during the three week vacation period in dispute, which constitutes approximately (57%) fifty-seven percent of the "normal work load" of (120) one hundred and twenty hours.

The defense advanced by Carrier is bottomed upon the contention that Petitioner incorrectly included two items in its computations, namely; 1. time for November 13 and 14, 1962 which is barred by the time limit rule and 2. overtime.

Petitioner concedes that the claim filed on January 18, 1963 does not encompass violations which allegedly occurred on November 13 and 14, 1962, dates more than sixty days prior to the date of claim. However, Petitioner

urges that said dates should be included for the purposes of computing the total number of hours during which remaining signal employees performed work on the Yukon territory while the regular incumbent was on vacation. We concur in the position of Carrier that the two dates are outside the proper scope of the claim and cannot be used in the computation of the (25%) twenty-five per cent factor contained in Rule 10 (b) of the Vacation Agreement. Likewise, said dates should be excluded from any computations and thus the aggregate of the vacation period for computation purposes would be (104) one hundred and four hours instead of the full three week vacation of the regularly assigned incumbent. Under this formula, the remaining employees worked (29) twenty-nine straight time hours on the Yukon territory, plus (28%) twenty-eight and three fourths overtime hours during the balance of the vacationing employee's absence, during which the normal work load was (104) one hundred and four straight time hours.

Article 10 (b) of the Vacation Agreement limits the amount of a vacationing employee's work which can be distributed among fellow employees to twenty-five percent. When more than the equivalent of twenty-five percent is imposed upon fellow employees, except by negotiations and agreement, the provisions of Article 10 (b) are violated. (Vacation Agreement, December 17, 1941, Interpretations thereon, page 94.)

Inasmuch as the remaining signal employees performed (29) twenty-nine hours of straight time work on the Yukon territory during the balance of the vacationing employee's absence during which a normal work load was (104) one hundred and four hours of straight time work, we find that the Carrier violated Section 10 (b) of the Vacation Agreement. Such determination is reached without consideration of the overtime work also performed by the fellow employees of the vacationing employee.

Carrier contends that the inclusion of overtime hours is improper because such time cannot be considered as part of the regular assignment as contemplated by the Vacation Agreement in computing work loads. Carrier avers that such overtime was "casual or unassigned overtime" and was not contemplated by Carrier. Petitioner asserts that nothing in the Vacation Agreement states or implies that overtime work is not to be considered part of the work load in computing the (25%) twenty-five percent figure. We find persuasive and controlling the conclusion reached by the Board in our Award 14668, which involved a similar dispute between the same parties. Accordingly, we find that overtime should properly be included as part of the work load in the instant dispute.

Paragraph (b) of the Claim demands that Carrier compensate the Claimant for an amount of time equal to that spent by signal employees on the Yukon signal maintenance territory during the period in question at the punitive rate of pay. Under the circumstances involved herein, including the fact that Claimant was not burdened by Carrier's failure to furnish a vacation relief worker while the regularly assigned Signal Maintainer was on vacation, we find no authority for the imposition of a penalty. Therefore, the Carrier shall be required to compensate the Claimant, who had previously relieved the vacationing employee while on vacation, at the pro rata rate for those hours when relief was necessary, except for November 13 and 14, 1962.

The aggregate number of hours included within the proper scope of the claim, both straight time and overtime, during which Carrier required the

remaining Signal employees from adjoining territories to perform work on the Yukon territory while the incumbent Signal Maintainer was on vacation, is (57 $\frac{3}{4}$ ) fifty-seven and three fourths hours, which substantially exceeds the (25%) twenty-five percent factor contained in Article 10 (b) of the Vacation Agreement. (Award 11282.)

**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 herein; and

That the Agreement was violated.

#### AWARD

Claim is sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.