

Award No. 15791
Docket No. SG-15604

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Reading Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Article II, Rule 14, Section (j), when work occurring at Diamond Street, Section No. 3, outside the assigned hours of regular employe Signal Maintainer J. H. Righter on December 24, 26, 27, 28, 29, 30 and 31, 1963, was assigned to the regular Signal Maintainers working first trick Wayne Junction, or second trick Wayne Junction, or second trick 16th Street.

(b) Mr. J. H. Righter be paid at the time and one-half rate seventy-two (72) hours' pay, amounting to \$304.32, for work he should have been allowed to perform on the days and hours listed below:

December 24, 1963	- 3:00 P.M. to 11:00 P.M.	- 8 hours
December 26, 1963	- 3:00 P.M. to 11:00 P.M.	- 8 hours
December 27, 1963	- 3:00 P.M. to 11:00 P.M.	- 8 hours
December 28, 1963	- 7:00 A.M. to 11:00 P.M.	- 16 hours
December 29, 1963	- 7:00 A.M. to 11:00 P.M.	- 16 hours
December 30, 1963	- 3:00 P.M. to 11:00 P.M.	- 8 hours
December 31, 1963	- 3:00 P.M. to 11:00 P.M.	- 8 hours

Total 72 hours

Carrier's File: 5015

EMPLOYEES' STATEMENT OF FACTS: Mr. J. H. Righter was at the time of this dispute assigned to a position the details of which are listed in Item No. 1 of Bulletin No. 20, dated November 29, 1963, which we have reproduced, identified as Brotherhood's Exhibit No. 1, and attached hereto as a part of this submission. Brotherhood's Exhibit No. 2 is a reproduction of Bulletin No. 21, dated December 16, 1963, which shows Mr. Righter to be the successful applicant for the Signal Maintainer position outlined in Bulletin No. 20.

be available and desired to be used for the work, Local Chairman Edwin N. Hower initiated a claim with Supervisor of Signals O. S. Penman on February 3, 1964. He requested that Signal Maintainer Righter be paid seventy-two (72) hours' overtime pay, or \$304.32. The initial claim is Brotherhood's Exhibit No. 3, and other correspondence pertaining to the claim and subsequent appeals is identified as Brotherhood's Exhibit Nos. 4 through 10. The rule in dispute herein is Article II, Rule 14(j); it is quoted by the Local Chairman in the letter which is now Brotherhood's Exhibit No. 8.

As indicated by the correspondence cited above, this dispute has been handled on the property, up to and including conference with the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute bearing an effective date of August 1, 1953, as amended, which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Carrier maintains interlocking plants at Diamond Street, Wayne Junction and 16th Street, all within the metropolitan Philadelphia area. Diamond Street is a one shift location held by Claimant Signal Maintainer J. H. Righter, 7:00 A.M. to 3:00 P.M. Monday to Friday. The 16th Street plant maintains a first and second trick force, 7:00 A.M. to 11:00 P.M. Monday to Friday. Wayne Junction supports three shifts, seven days a week.

On Tuesday, December 24, 1963, a false clear indicator was observed in the Diamond Street territory and the second trick Maintainer from 16th Street was dispatched to investigate the failure at approximately 6:00 P.M. This malfunction was indicative of a general difficulty which Carrier was experiencing in regard to the entire signal system at Diamond Street. Accordingly, Carrier installed tape recorders at various circuits throughout its entire electrical system in order to ascertain the location of the trouble. When necessity compelled these recorders to be checked at times when claimant was off duty, first and second trick Maintainers from either 16th Street or Wayne Junction performed this brief function. Claimant's position is that during this period of testing, namely, December 24, 26-31, 1963, he should have been accorded two days of first trick work and seven days of second shift labor. Hence claimant demands that he be compensated for 72 hours' time and one-half work, or \$304.32, for the labor performed during his off-assignment and rest day periods.

Specifically, the Brotherhood alleges that Article II, Rule 14, Section (j), of the Agreement between Reading Company and Brotherhood of Railroad Signalmen of America - effective August 1, 1953 and incorporated herein by reference, has been violated.

Carrier denies the violation and affirms that the disputed work was performed according to the customary, usual and routine method accepted on this property.

OPINION OF BOARD: The Claimant was assigned to work 7:00 A.M. to 3:00 P.M., Monday through Friday, on Section 3, Diamond Street Inter-

locking at Philadelphia, Pennsylvania. A Relief employe was not provided for his section, and there were not any second or third trick signal maintainers assigned. Beginning December 24th and continuing each day through December 31 except December 25, other Signal Maintainers from adjoining 16th Street Junction Interlocking and Wayne Junction Interlocking were used at claimant's station, Diamond Street Interlocking.

The Brotherhood contends that the Carrier violated the current Signalmen's Agreement, particularly Article II, Rule 14 (j), which reads as follows:

"(j) Work On Unassigned Days.

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employe who will otherwise not have 40 hours of work that week; in all other cases, by the regular employe."

They further contend that the disputed work was required to be performed after Claimant's regular hours or on his relief days, that it was required to be performed on days which were not a part of any assignment, that it was performed by employes other than the regular one, that it was performed not by available unassigned employes who would otherwise not have had 40 hours of work in the weeks involved, and, finally, that it was performed by employes assigned to territories other than the one on which they performed the disputed work.

The Carrier alleges that it has been the practice on this property for Signal Maintainers to function at adjoining locations where a Maintainer was off duty. Carrier also contends that the aforequoted Section (j) pertains only to work required to be performed on a day which is not a part of any assignment and, further, that the rule does not require that all work of each day must be done by the employe whose assignment includes part of that day.

The rule of the basic contract that is in dispute, "Work on Unassigned Days", is clear and unambiguous. The words, "Where work is required by the Carrier to be performed on a DAY WHICH IS NOT PART OF ANY ASSIGNMENT" [Capitalization ours], are not, in our judgment, susceptible to misinterpretation. Part of the disputed work was performed on claimant's assigned days, namely, Tuesday, Thursday, Friday, Monday and Tuesday, December 24, 26, 27, 30 and 31. Can we say that this was work to be covered on a DAY WHICH IS NOT PART OF ANY ASSIGNMENT? Clearly, the converse is true. It was work to be performed on a day which was part of an assignment, that is, Claimant's assignment. Hence, Claimant under this rule could not complain that he had a prior right to the work. The Claim, insofar as the work on December 24, 26, 27, 30 and 31 is concerned, is accordingly denied.

The work performed on the Claimant's rest days, December 28 and 29, is another matter to be considered. Carrier asserts that the work on these days was part of the regular assignment of those employes from the adjoining districts who actually performed the work, that in order for claimant to succeed on this portion of the claim, he would have to demonstrate

an exclusive right to such work. We are not convinced by Carrier's evidence to sustain its position that this work was part of the assignment of the Maintainers of the adjoining districts. The evidence of record indicates that the work on December 28 and 29 was not part of any assignment, and hence in accordance with the clear unambiguous language of 14 (j) should have been performed by either an available unassigned employee who would otherwise not have had 40 hours of work that week, or by the regular employee. Since there was no available unassigned employee, the Claimant, as the regular employee, was entitled to the work.

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the opinion herein stated as to work on December 28 and 29.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1967.