



Award No. 16498
Docket No. SG-16690

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Signalman W. H. Wortman for the difference between 15 days' compensation at time and one-half rate and the compensation already allowed him at the pro rata rate while relieving an employe absent on vacation commencing September 30, 1965.
[Carrier's File: B 225-468]

EMPLOYEES' STATEMENT OF FACTS: At the time this dispute arose, Claimant was the incumbent of a Signalman position that had been advertised on Bulletin No. 13 dated July 6, 1965, as follows:

"B - Title of Position:	Signalman
Location of Headquarters and Gang Number:	Retarder Yd. Bldg. - Gang 411, N. Little Rock
Rate of Pay:	\$2.94 Hr.
Assigned Hours of Service:	7:00 A. M. to 3:30 P. M., exclusive of meal period.
Assigned Work Week and Rest Days:	Work - Monday through Friday Rest - Saturday and Sunday
Assigned Territory:	Little Rock Terminal
Permanent or Temporary:	Permanent
Brief Description of Duties:	Covered by Scope of Agreement. Welding of retarder yard equipment; maintain, repair, inspection and tests, complete retarder yard installations, including outlying signals and indicators used with such installation, cab signals, re-

commencing that date. Claimant filled the vacation vacancy for the three-week period and was paid at the rate of the Retarder Yard Maintainer.

4. Since claimant was changed from the first shift to the third shift in order to fill the vacancy, he was paid the time and one-half rate for the change of shift from the first shift to the third shift on September 30, and for the change of shift from the third shift to the first shift when returning to his regularly assigned position after filling the vacation vacancy. The additional allowance for change of shift was made in accordance with Rule 304 (d), reading as follows:

“(d) Employes changed from one shift to another by direction of the Management will be paid overtime rates for the first shift of each change. This will not apply in the exercise of seniority, when shifts are temporarily changed at the request of the employes involved, nor when change of shifts is included in regular relief assignments.”

5. Claim was filed on behalf of Signalman Wortman for the difference between the time and one-half rate of his position and the amount allowed while filling the vacation vacancy on the third trick Retarder Yard Maintainer position.

OPINION OF BOARD: W. H. Wortman, Signalman, assigned hours 7:00 A. M. to 3:30 P. M., was instructed to relieve the third trick Maintainer assigned hours 11:00 P. M. to 7:00 A. M., while that employe was on a three week vacation beginning September 30, 1965.

Claim is made on behalf of Mr. Wortman for the difference between fifteen days' compensation at the time and one-half rate and the compensation allowed him at the pro rata rate while relieving the third trick Maintainer.

Petitioner contends Carrier violated the Signalmen's Agreement when it unilaterally required Mr. Wortman to suspend work on his own assignment in order to provide vacation relief for a third trick employe. It maintains that since Signalman Wortman had a regular assignment, he was improperly required to work a different set of hours at the straight time rate. It relies primarily on the Starting Time Rule 301 (d) and Assignments Rule 407 (a), (b) and (c) to support the claim.

Carrier denies the claim and takes the position that under Rule 407 (c), which is the rule for filling a vacancy not subject to bulletin, it had the right to select an available employe of the same class to fill the vacancy and pay the Maintainer rate of pay. Since this is the same rate of pay as that of a Signalman, it argues that Mr. Wortman is not entitled to an additional compensation. Moreover, Carrier points out that when Mr. Wortman was changed from the first shift to the third shift to relieve the vacationing Maintainer, he was properly paid the time and one-half rate for the change from the first to the third shift on September 30, and for the change from the third to the first shift when he returned to his regularly assigned position in accordance with the provisions of Rule 304 (d).

In rejecting the claim, Carrier argued that the starting time of Mr. Wortman, who was in the category of a regularly assigned Signalman, was not changed and therefore Rule 301 (d) is not applicable. However, in paying Mr. Wortman at the overtime rate on the basis of Rule 304 (d), we find Carrier

did in effect recognize a change in the starting time, for that rule provides that employes changed from one shift to another by direction of Management will be paid overtime rates for the first shift of each change.

With reference to Rule 407 (c) which Carrier uses to explain its right to assign Mr. Wortman to a vacancy not subject to bulletin, we find the provision in the rule at the end of the first sentence of section (c), "if he so requests" of

In rejecting the claim, Carrier argued that the starting time of Mr. Wortman, who was in the category of a regularly assigned Signalman, was not changed and therefore Rule 301 (d) is not applicable. However, in paying Mr. Wortman at the overtime rate on the basis of Rule 304 (d), we find Carrier did in effect recognize a change in the starting time, for that rule provides that employes changed from one shift to another by direction of Management will be paid overtime rates for the first shift of each change.

With reference to Rule 407 (c) which Carrier uses to explain its right to assign Mr. Wortman to a vacancy not subject to bulletin, we find the provision in the rule at the end of the first sentence of section (c), "if he so requests" of more significance than Carrier acknowledges. The record shows that Mr. Wortman did not request that he be used in vacation relief work and, in fact, protested this assignment. We hold that this rule is, therefore, not a basis for taking Signalman Wortman off his regular assignment to fill the vacation vacancy.

Since Mr. Wortman held a regular assignment as a Signalman on the first shift and Carrier required him to perform relief work of a vacationing Maintainer on the third shift for fifteen days under his protest, Carrier violated the Agreement. We therefore hold that Mr. Wortman is entitled to the difference between time and one-half rate and compensation already allowed him at the pro rata rate for the fifteen days.

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 was violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1968.

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