

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company that:

(a) The restrictions of May 24, 1965, placed on make-up time under Rule 25 be withdrawn, and the conditions and practices in effect prior to that date be re-established immediately.

(b) Each of the employes named below be paid time and one-half their respective straight time hourly rate for the number of hours consumed in waiting or traveling after midnight Friday (on the rest day—Saturday) from Midland, Texas, to their homes on Trains No. 26 and No. 22.

Employee	S.T. Rate	Home Town	Date	Hours Claimed
G. A. Megason Signal Foreman	\$2.99872	Mineola	May 29, 1965	18 hrs.—40 min.
M. F. Eubanks Signalman	2.9288	Ft. Worth	May 29, 1965 June 12, 1965	13 hrs. 13 hrs.
			Total	26 hrs.
G. R. Jones Signalman	2.9288	Ft. Worth	May 29, 1965 June 12, 1965 June 19, 1965	13 hrs. 13 hrs. 13 hrs.
			Total	39 hrs.
M. P. Farnsworth Signalman	2.9288	Cisco	May 29, 1965 June 12, 1965 June 19, 1965	10 hrs.—35 min. 10 hrs.—35 min. 10 hrs.—35 min.
			Total	31 hrs.—45 min.

Employee	S.T. Rate	Home Town	Date	Hours Claimed
P. R. Sumpter Asst. Signalman	2.5968	Ft. Worth	May 29, 1965	13 hrs.
			June 12, 1965	13 hrs.
			June 19, 1965	13 hrs.
			Total	39 hrs.
D. R. Elrod Asst. Signalman	2.5968	Cisco	May 29, 1965	10 hrs.-35 min.
			June 12, 1965	10 hrs.-35 min.
			June 19, 1965	10 hrs.-35 min.
			Total	31 hrs.-45 min.

EMPLOYEES' STATEMENT OF FACTS: This claim resulted when Carrier refused to continue to allow employes in the System Signal Construction Gang to make up time after May 24, 1965, as they had in the past, so they could get home on weekends.

Prior to that time, in accordance with the provisions of Rule 25 of the Signalmen's Agreement and a practice of some forty-four (44) years' duration, employes assigned to these gangs had been permitted to make up a sufficient amount of time in either four or five days to make weekend trips home.

Whenever the gangs were working in far west Texas, New Mexico, and Southern Louisiana, the employes were permitted to make up eight (8) hours' work each week. Prior to the so-called 40-Hour Week Agreement they worked 48 hours in 5 days; afterwards, they worked 40 hours in 4 days.

On September 1, 1964, instructions were given verbally by Superintendent of Signals and Communications G. H. Alford to Signal Foremen that their gangs would no longer be permitted to work 4 ten-hour days. He said makeup time would in the future be limited to 4 hours each week.

General Chairman J. J. Morris immediately entered a protest against such unilateral action by Mr. Alford, and the matter was subsequently handled with Superintendent Alford and Director of Personnel O. B. Sayers during all of which time the practice of the gangs' working 4 ten-hour days was continued. A conference with Mr. Sayers was had on February 8, 1965, and on the following day Mr. Sayers addressed a letter to General Chairman Morris in which he had the following to say:

"We discussed this matter with you in conference in my office on February 8, 1965, reviewing your letter of January 15, 1965, to Mr. Alford, and his letter to you of December 8, 1964.

* * * * *

After our thorough and frank discussion of the matter, it was felt that there should be no cause for any complaint."

And there was no complaint until May 24, 1965, when Mr. Alford told the System Signal Construction Gang employes that thereafter the amount of time which could be made up in a week would be limited to 4 hours. The practice of permitting them to work 4 ten-hour days was then discontinued.

In view of the foregoing and the statement contained in the last paragraph of your letter, we feel certain you will be able to withdraw these claims as you have suggested.

For these reasons, we must affirm the decision given to you in our letter of December 10, 1965.

Yours truly,

/s/ B. W. Smith"

After a further exchange of correspondence, the Carrier received a copy of the Organization's letter notifying your Board of their intention to file a submission in this dispute.

OPINION OF BOARD: Prior to May 24, 1965 employees assigned to gangs working at substantial distances away from their home stations were permitted to make up sufficient time during four or five day work weeks to enable them to take weekend trips home. This was often done by working four 10 hour days. On May 24, 1965 Superintendent Alford informed System Signal Construction gang employees, that thereafter the amount of time which could be made up in a week would be limited to four hours. Employees filed the instant claim when they were forced to travel home on Saturdays on three successive weekends.

Organization claims that Rule 25 of the parties Agreement enables employees to elect and make up lost time at straight time rates in order to make weekend trips to their homes. It asserts that Carrier was arbitrary in denying employees the right to make up the hours during these three weeks, particularly since there was no showing as through overtime work that the work which they were doing was of an emergency or rush nature. Accordingly it asserts that conditions did permit employees to make up such time lost in going home, and that Claimants are thus entitled to the amounts claimed because of Carrier's improper action.

Carrier denies that it acted improperly. It relies on Rule 28(a) which clearly establishes a five day week, and asserts that when management in its judgment determines that conditions permit, employees may make weekend trips to their homes. It acknowledges that Rule 25 permits employees to make up time lost, but it insists that it has the final authority to determine when such weekends may be taken and such time may be made up.

Rule 25 of the parties Agreement envisions that employees working in gangs so removed from their base location as to require extra travel time to spend reasonable weekends at home may work extra hours on other days of the week at straight time rates to make up for time lost in travel. However this procedure is not set forth as an absolute right of the employees concerned. Rather such procedures are conditioned not upon an objective standard of "when conditions permit" but rather "when in the judgment of the management conditions permit." Thus it has been agreed by the parties that the Carrier shall have the authority to determine when employees working under such conditions may make weekend trips home, and when they may make up the necessary lost travel time hours to accomplish this.

This judgment of the management must be exercised in a fair and reasonable manner, and Organization has the right to challenge this exercise of judgment if it feels Carrier to be arbitrary or capricious in its actions.

In the instant case the evidence is that the gang concerned was occupied in installing flashing light signals needed to protect traffic using FR Road 1369 as it crossed the railroad and in rearranging signals related to a siding extension at Pilot Point. In the light of these facts we are unconvinced by Organization's claim that Carrier's action for three weeks in denying the opportunity for extended weekends was either arbitrary or capricious. Accordingly the claim must be 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 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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1968.

DISSENT TO AWARD NO. 16505, DOCKET SG-16683

We are gratified that the Majority concedes that the "judgment of the management" is not a final, unquestionable prerogative; truly, management must exercise its judgment in a fair and reasonable manner. We do not, however, agree that management did so in the present dispute.

As pointed out by the employes, in the circumstances which obtained in Docket SG-16683, only an urgency such as a deadline which, in order to be met, required that employes be worked in excess of their normal forty-hour week could have established fairness and reasonableness in the management's judgment. The incident complained of extended over a period of three weeks, and in none of these weeks was it necessary to work the claimant employes more than forty hours on the projects cited as justification. The Carrier would not have been placed in more than normal jeopardy by acceding to its employe's request, and this fact, it is evident, was known to the Carrier in advance. No condition existed which should have lead the Carrier to its arbitrary judgment.

Award No. 16505 is in error and I dissent.

W. W. Altus
For Labor Members

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