



Award No. 17004
Docket No. SG-17646

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Virginian General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 314 (f), when on October 2, 1966, and other dates identified herein, it failed and/or otherwise refused to call Leading Signal Maintainer E. E. Cooper for overtime service on his regularly assigned territory, when he was available for call.

(b) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for October 2, 1966. [Carrier's File: S-373.]

(c) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for September 28, 1966. [Carrier's File: S-374-1.]

(d) Carrier should now be required to pay Mr. Cooper five and four-tenths (5.4) hours at the overtime rate for November 1, and 2, 1966. [Carrier's File: S-374-2.]

(e) Carrier should now be required to pay Mr. Cooper one (1) hour at the overtime rate for November 29, 1966. [Carrier's File: S-374-3.]

(f) Carrier should now be required to pay Mr. Cooper five and four-tenths (5.4) hours at the overtime rate for November 3, and 9, 1966. [Carrier's File: S-374-4.]

(g) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for December 8, 1966. [Carrier's File: S-374-5.]

(h) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for December 27, 1966. [Carrier's File: S-376.]

(i) Carrier should now be required to pay Mr. Cooper ten and eight-tenths (10.8) hours at the overtime rate for December 3, 8, 9, and 15, 1966. [Carrier's File: S-377.]

(j) Carrier should now be required to pay Mr. Cooper five and four-tenths (5.4) hours at the overtime rate for December 24 and 27, 1966. [Carrier's File: S-378.]

(k) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for December 31, 1966. [Carrier's File: S-379.]

(l) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for December 27, 1966. [Carrier's File: S-380.]

(m) Carrier should now be required to pay Mr. Cooper five and four-tenths (5.4) hours at the overtime rate for January 17, and 18, 1967. [Carrier's File: S-381.]

(n) Carrier should now be required to pay Mr. Cooper two and seven-tenths (2.7) hours at the overtime rate for January 11, 1967. [Carrier's File: S-382.]

EMPLOYEES' STATEMENT OF FACTS: On June 18, 1959, an "Agreement for protection of Employees as result of merger of Norfolk and Western Railway Company and The Virginian Railway Company" was signed at Washington, D. C.

On April 19, 1960, a "Memorandum of Agreement" was signed between the Norfolk and Western Railway Company and the Brotherhood of Railroad Signalmen providing for the merging of the two Agreements representing the Norfolk and Western Railway and Virginian Railway Company employees. (Brotherhood's Exhibit No. 1.)

Section 9 of the "Memorandum of Agreement" reads as follows:

"Norfolk and Western and former Virginian employees will work under the rates of pay, rules and working conditions of their respective schedule agreements."

Rule 314 of the current agreement, the basis on which claims involved in this dispute are filed reads as follows:

"(f) Employees assigned to or filling vacancies on regular maintenance assignments and paid on an hourly basis will respond to calls when called. Assignee filling position will be called unless registered absent."

Claimant is a former Virginian employee.

In the application of Rule 314 (f), Carrier issued instructions, file No. 1803 dated August 13, 1964, outlining in detail the manner in which maintainers would be called to perform emergency work on Roanoke Terminal. This letter is (Brotherhood's Exhibit No. 2).

On Wednesday, January 11, 1967, Maintainer filling position assigned 11:00 P.M. to 7:00 A.M., Tuesday through Saturday, was instructed at 11:30 P.M., during his tour of duty, to renew switch lamp and completed work at 12:01 A.M., January 12, 1967.

(Attachment "A" not reproduced.)

OPINION OF BOARD: In June, 1959, Carrier entered into an agreement for the protection of its employes as a result of its merger with the former Virginian Railway Company. Under the terms of the Agreement, Carrier assumed the Signalmen's Agreement applicable to former Virginian Signal employes.

Prior to the merger, Claimant held the only Virginian signalmen's assignment in the South Yard at Roanoke. He was frequently called by the Carrier to perform overtime work related to that assignment. He had no rights to service in the North Yard, since that was part of the Norfolk & Western System.

Subsequent to the merger, Claimant acquired seniority rights within Carrier's system and at the time of the claim was assigned as Leading Signal Maintainer, an original Norfolk and Western position. His assigned hours were 7:00 A.M. to 4:00 P.M., Monday through Friday. In addition to his position, there were 5 other signalmen's assignments covering the terminal area which includes the limits of the Claimant's assignment. These included second and third shift positions with regularly assigned hours outside of Claimant's. Claimant alleges a violation of a special Memorandum of Agreement and Rule 314 of the current agreement. The former reads:

"SECTION 9.

MEMORANDUM OF AGREEMENT

Norfolk and Western and former Virginian employes will work under the rates of pay, rules and working conditions of their respective schedule Agreements."

Rule 314 (f) provides:

"Employes assigned to or filling vacancies on regular maintenance assignments and paid on an hourly basis will respond to calls when called. Assignee filling position will be called unless registered absent."

Claim has been submitted for overtime compensation for various hours outside of Claimant's regular assigned hours but within the assigned hours of other employes, e.g. the second and third shift. The essence hence of the claim is that Claimant states that under Rule 314 (f), he has a demand right to perform all extra service beyond his assigned hours on an overtime basis, even though this work could be performed on a pro rata basis by an employe on duty covering the same general territory.

We cannot subscribe to the Organization's position in this matter. Rule 314 (f) does not amount to a demand right on the part of the Claimant. It simply states he will respond when called and will be called unless registered absent. To ignore the rights of the other employes invoked and insist that

Claimant should be called for work outside his own assignment but within the assignments of other employes at an overtime rate, would be tantamount to an unreasonable construction of the contract. Under the interpretation urged upon us by Claimant, other regularly assigned employes while on duty, would be required to stand idly by while Claimant was called to perform work on an overtime basis. This is equivalent to "reductio Ad Absurdum" and would lead to unreasonable results. We will deny the claim.

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.

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 March 1969.