



Award Number 17374

Docket Number SG-14743

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

- (a) The Carrier violated Articles 6 and 10(b) of the December 17, 1941 Vacation Agreement when it burdened Signal Maintainer J. C. Fortune, Byron, Illinois, by requiring him to work a total of thirty-three (33) hours and fifty-five (55) minutes on the Kirkland signal maintenance territory while the Kirkland Signal Maintainer, Mr. Ray Darr, was on a two-week vacation from October 15 through 26, 1962, in addition to maintaining his own territory. Special Signal Maintainer J. E. Fazel also worked four hours on the Kirkland territory during the same two-week period.
- (b) The Carrier be required to compensate Mr. J. C. Fortune the punitive rate of pay for the following amount of time for which he only received the straight-time rate of pay:

October 16—8 A.M. to 11:30 A.M.—three (3) hours and thirty (30) minutes.

October 18—2 P.M. to 3:00 P.M.—One (1) hour.

October 19—6 A.M. to 3:00 P.M.—eight (8) hours.

October 25—7 A.M. to 11:00 A.M.—four (4) hours.

October 26—7 A.M. to 11:00 A.M.—four (4) hours.

(Carrier's File: F-1046)

EMPLOYEES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute is a result of the Carrier having failed to provide a vacation relief worker for the Kirkland signal maintenance territory while the regular Kirkland Signal Maintainer was on a two week vacation commencing October 15, 1962.

The record will show that the Carrier's failure to provide a vacation relief worker resulted in remaining signal employees being burdened during this vacation period, and that we contend this situation constituted a violation of Articles 6 and 10 (b) of the National Vacation Agreement of December 17, 1941.

On October 19, 1962, claimant Fortune was called to Davis Junction, Illinois on employe Darr's territory for the purpose of bonding and taking care of rail connections account the Division Extra Gang changing out rails. Claimant Fortune used his personal automobile and inasmuch as Davis Junction is approximately 9 miles from claimant Fortune's headquarters at Byron it is estimated the round trip (approximately 18 miles) consumed approximately 40 minutes or, in other words, on October 19, 1962, there was involved, on the part of claimant Fortune, approximately 40 minutes travel time and only 7 hours and 20 minutes work on employe Darr's territory.

On October 25, 1962, claimant Fortune was called to Davis Junction, Illinois on employe Darr's territory for the purpose of bonding and taking care of rail connections account the Division extra gang changing out rails. Claimant Fortune used his personal automobile and inasmuch as Davis Junction is, as stated previously, approximately 9 miles from claimant Fortune's headquarters at Byron it is estimated the round trip (approximately 18 miles) consumed approximately 40 minutes or, in other words, on October 25, 1962, there was involved, on the part of claimant Fortune, approximately 40 minutes travel time and only 3 hours and 20 minutes work on employe Darr's territory.

On October 26, 1962, claimant Fortune was called to Signal 73-1 on employe Darr's territory to locate and clear trouble. Claimant Fortune used his personal automobile and inasmuch as Signal 73-1 is approximately 16 miles from claimant Fortune's headquarters at Byron it is estimated the round trip (approximately 32 miles) consumed approximately 1 hour and 10 minutes or, in other words, on October 26, 1962, there was involved, on the part of claimant Fortune, approximately 1 hour and 10 minutes travel time and only 2 hours and 50 minutes work on employe Darr's territory.

On October 26, 1962, there was involved, on the part of employe Fazel, approximately 1 hour travel time and 3 hours work on employe Darr's territory.

In other words, as stated above, during the period employe Darr was on vacation, i.e., from October 15 through October 26, 1962, claimant Fortune and employe Fazel performed only about 19 1/2 hours work on employe Darr's territory during their regularly assigned hours on their regularly assigned work days.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. D. E. Twitchell, General Chairman, under date of May 29, 1963 and as Carrier's Exhibit "B" copy of letter written by Mr. Amour to Mr. Twitchell under date of July 15, 1963.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant Fortune is a Signal Maintainer maintaining a territory with headquarters at Byron, Illinois. Employe Darr is also a Signal Maintainer maintaining the Kirkland, Illinois, territory adjacent to the Byron territory on Carrier's line. It is alleged that Carrier violated Articles 6 and 10(b) of the Vacation Agreement of December 17, 1941 when it required Claimant to do certain work on the Kirkland territory during Darr's two-week vacation in addition to maintaining his own territory.

Basic to the dispute is how many hours of work were done by Claimant on the Kirkland territory and how many of those hours are contemplated by the wording and limits of Rule 10(b).

Claimant alleges that twenty (20) hours and thirty (30) minutes of regular time during the eighty (80) regular work hours of Darr's vacation as reported on Claimant's time sheets is chargeable to Kirkland Territory or Darr's duties. Carrier responds that four (4) hours and ten (10) minutes of that was estimated travel time and thus not chargeable as "work" and thus bringing the total work time below twenty (20) hours or less than twenty-five percent of Darr's eighty hours as contemplated by Rule 10(b).

Somewhere between lies the truth. It is well settled that travel time may not be included in computation of time in "work load" in 10(b). See Awards 6400 (McMahon), 9572 (Fox), 10005 (McMahon) and 10761 (McGrath). However, as Claimant contends, Carrier's travel time estimates of Claimant's automobile travel are so generous as to appear unreasonable, i.e. 28 miles—1 hour; 18 miles—40 minutes; 32 miles—1 hour, 10 minutes.

Claimant further contends that thirteen (13) hours and twenty-five (25) minutes of overtime during the period in question worked on the Kirkland territory should be added into the total hours of work-load assumed by Claimant. Carrier responds by citing Award 15830 (Ives) which says: "Overtime service performed by Claimant cannot be considered in computing the 25% guideline", but that Award also says, "The record does not reveal any competent evidence concerning the number of hours worked by Claimant on an overtime basis performing assignments normally performed by the vacationing fireman."

In the matter at hand it is not disputed ten (10) hours and forty-five (45) minutes of that overtime on the Kirkland territory was Darr's work and was performed during his vacation period. Carrier urges that it should not be used in computation. This Board is persuaded by Awards 14668 (Devine) and 15061 (Ives) and the record that the overtime here is not casual overtime but properly included in computation of the 25% guideline, thus dictating the conclusion that Carrier violated Rule 10(b) of the Agreement.

As regards Rule 6, any violation would turn on whether or not Claimant has sustained the burden of proof that he was "burdened" by the imposition of the additional duties by failure of Carrier under Rule 10(b). According to interpretation of the Vacation Agreement by Referee Morse, Claimant must show that he was overtaxed or oppressed or that he was not reasonably able to do the work, that the demands of the additional service were unreasonable. Although Claimant here shows that the demands of service required approximately fifteen (15) hours of overtime work during the two-week period, this in itself does not establish violation of Rule 6.

Claimant herein seeks compensation at the punitive rate of pay and Carrier responds that no monetary award may be made, citing Awards 10963 (Dorsey), 13958 (Dorsey) and 14918 (Kabaker).

It is the judgment of this Board that Claimant should be compensated for eighteen (18) hours and twenty-five (25) minutes at the pro rata rate for those twenty hours and thirty minutes of regular time charged to the Kirkland territory less two (2) hours and five (5) minutes, being half of Carrier's estimated travel time.

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 the Agreement was violated. Claim item (a) sustained in part and denied in part. Claim item (b) sustained in part and denied in part.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1969.