

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway and 2nd trick on Monday and Tuesday.

(b) Carrier be required to pay Mr. Pesnell at his straight-time rate for all hours he was not allowed to work his regular assignment and at his time and one-half rate for all hours he worked outside his regularly assigned hours, starting with November 1, 1967, when he was instructed to work various periods outside of his regularly assigned work hours and work days, as contemplated by Bulletin No. 12 which had definitely established his regularly assigned tours of duty; i.e. 3rd trick on Thursday, 1st trick on Saturday and Sunday.

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 13, 17 and 18, when it refused to properly compensate Signal Maintainer W. L. Pesnell and Leading Signal Maintainer L. H. Coble for work they performed outside their regularly assigned work days and/or hours.

Company—the former New York, Chicago and St. Louis Railroad Company—that:

(c) Carrier be required to pay Mr. Coble at his straight-time rate for all hours he was not allowed to work his regular assignment and at his time and one-half rate for all hours he was required to work outside his regular assignment starting November 1, 1967. (Carrier's File: 30-21-25.)

EMPLOYEES' STATEMENT OF FACTS: Effective September 22, 1967, W. L. Pesnell became the relief signal maintainer at Bellevue, Ohio. The assignment consisted of the 3rd trick on Thursday, 1st trick on Saturday and Sunday and 2nd trick on Monday and Tuesday. (See Brotherhood's Exhibit Nos. 1 and 2.) Off days of the position are Wednesday and Thursday.

Beginning November 1 and continuing through November 22, 1967, Mr. Pesnell was required by the Carrier to work on his off days and on tricks other than his regularly assigned tricks. When he requested overtime for service performed on his rest days and for the time he was required to suspend work

Third Shift

Vacant and Being Advertised

8 8 8 R R 8 8

Swing Shift

W. L. Pesnell

Third Shift - Thursday

Rest Day - Friday

First Shift - Saturday

First Shift - Sunday

Second Shift - Monday

Second Shift - Tuesday

Rest Day - Wednesday

It should be noted also that just prior to the times and dates in question the regular third shift signal maintainer resigned from Carrier's service and his former position was being bulletined. Further, the regular second shift signal maintainer, R. M. Kimmet, was just beginning his annual vacation.

Therefore, since Maintainer Coble was the junior maintainer on the first shift, he was assigned to temporarily protect the vacant third shift position during the life of the bulletin and swing shift Maintainer Pesnell was assigned to temporarily work the second shift during the vacation of Maintainer Kimmet. Such work was not continuous as Mr. Coble returned to the first shift during the period for which he is making claim and was only used temporarily on the third shift as service requirements demanded. Also, Mr. Pesnell was, in effect, performing his regular duties two days a week and both employees were compensated at their straight-time rates for all straight-time hours and at their overtime rates for all overtime hours. In addition, all signal maintainers assigned to Bellevue Yard worked on their assigned rest days and were paid at the time and one-half rate for such service and Assistant Signal Maintainer Short was subsequently upgraded to Maintainer and paid at the applicable rate. Thus, all employees benefited materially by this arrangement.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is the result of the temporary assignment of two positions on the second and third shifts at Carrier's Bellevue Classification Yard.

It is argued that this action violated Rules 11, 13, 17 and 18 of the current Agreement. Rule 11 provides for starting time.

A letter dated February 26, 1968, from the Organization in handling this matter on the property says, in part:

"... It is true that employes had been temporarily transferred in the past to fill vacation and other vacancies."

It is also brought out in the handling that various positions have starting times different from others.

Rule 13 covers absorbing overtime and we find that neither it nor Rule 11 is applicable in this case. Thus, Rules 17 and 18 do not have weight.

It was called to the attention of this Board that on the dates of November 16 for Claimant Pesnell and November 1 and 8 for Claimant Coble they were improperly paid and should have been allowed pay at the time-and-one-half rate because they were working the rest day of the position they occupied. We do not find sufficient support in the record to sustain this contention.

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 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 23rd day of October, 1970.