



Award No. 18303
Docket No. SG-18757

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

(a) The Carrier violated the current Signalmen's Agreement, in particular Rule 53(c) and Rule 24, when it declined to compensate Signal Foreman R. H. Honaker, at his applicable overtime rate of pay, in addition to his monthly rate of pay which he received, for work performed on Saturday, January 25, 1969.

(b) The claimant, Signal Foreman R. H. Honaker, is regularly assigned to position of Signal Foreman on the Huntington Division, headquarters Camp Cars, assigned hours 7 A. M. to 4:00 P. M. one (1) hour lunch period, rest day (regular) Sunday. In accordance with Rule 53(c), Foremen will not be required to work on the sixth day of the work week or on holidays except in case of emergency.

(c) The Carrier now be required to compensate Signal Foreman R. H. Honaker, at his applicable overtime rate of pay for thirteen and one-half hours, in addition to his monthly rate of pay which he received account of the violation cited in part (a) of claim.
(Carrier's File: 1-SG-274.)

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute bearing an effective date of August 16, 1946, reprinted May 16, 1958, Rule 53 of which provides in pertinent part:

"(c) * * * The monthly rate for gang foremen as shown in Rule 53(a) covers all service performed, except that (1) * * *; (2) Foremen will not be required to work on the sixth day of the work week or on holidays unless in case of emergency; * * *."

The Claimant, Signal Gang Foreman R. H. Honaker, on the date of this claim was assigned to the position of Foreman of the Carrier's signal gang on its Huntington (W. Va.) Division; his assigned hours were 7:00 A. M. to 4:00 P. M., Monday through Friday, rest day Sunday.

Shortly after 4:00 A. M. on Thursday, January 23, 1969, a car in the Carrier's train No. 94 derailed at First Street, Huntington, West Virginia, at interlocking known as HO Cabin. Several switches within the interlocking

- (3) March 20, 1969. Fire occurred at Pratt, West Virginia, and foreman and his force devoted 4 hours' overtime to replacing signal cable damaged by that fire.

In handling on the property, the Employees' attention was called to Award 12181 of the Third Division, National Railroad Adjustment Board.

A copy of the papers showing claim and responses, etc., in handling on the property is attached as Carrier's Exhibits 6 to 15, inclusive.

Having thus outlined the facts in the case, the Carrier will now set forth and discuss its position.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a Signal Foreman regularly assigned Monday through Friday, rest day Sunday. The pertinent contract provision relating to his method of payment states:

"The monthly rate for gang foremen . . . covers all service performed, except that . . . (2) Foremen will not be required to work on the sixth day of the work week or on holidays unless in case of emergency . . ."

The parties agree that if a foreman is required to work on the sixth day of his work week when no emergency exists he should be paid, in addition to his monthly rate, time and one-half for all hours worked on the sixth day. The issue presented herein is whether Claimant should receive compensation in addition to his monthly rate for hours he worked on Saturday, January 25, 1969 (the sixth day of his work week).

At approximately 4:00 A.M. on Thursday, January 23, 1969, a car in one of the Carrier's trains derailed at Huntington, West Virginia, and wiped out eight switches at interlocking facilities west of the Huntington yard and terminal area. The derailment blocked both main line and switching operations, but service was restored that same day by making temporary repairs to all but the crossover switches. The inability to use the crossover switches occasioned some delay and inconvenience to yard operations and movements of coal through the area, but all movements were accomplished by by-passing these switches and using the crossover switches at the opposite end of the yard. The Carrier's Trainmaster stated that five movements were delayed as a result of main line crews having to set Huntington cars off or hold them out by reason of congestion in the yard. On January 23rd, three delays of 30 minutes, 40 minutes and 4 hours and 35 minutes were incurred, and on January 24th, two delays of 45 minutes each occurred. The record does not indicate that any delays in switching movements occurred thereafter.

Claimant was instructed at 1:10 P.M. on January 23rd to take a truck and his gang to a Reclamation Plant located nine miles from the site of the derailment to pick up materials needed for the repair work and then to proceed to the scene of the derailment. When Claimant and his gang arrived at site the temporary repairs had already been accomplished and the main line tracks were open. Claimant's gang worked only their regular hours that day. The Carrier contending that the reason that Claimant's gang was not put to work

on the repair immediately was that "... a substantial and essential part of ... " the material needed for the repair was not then on the site. Claimant states that "most of the necessary material needed to restore HO Cabin to normal operation was brought by my force from Barbourville Reclamation Plant on Thursday, January 23, 1969, except some pipe fittings which could be purchased at any local hardware in Huntington, W. Va." In any event, the material which was not on the site when Claimant arrived was ultimately obtained from company sources in the Huntington area.

Claimant was told to have his gang report for work on the derailment site at their regular starting time Friday, January 24th, and they worked until 6:30 P. M., or two and one-half hours' overtime, on that day. This gang was also assigned to this work on Saturday, January 25th, on which they worked thirteen and one-half hours. This gang did not work on Sunday, January 26th, but two maintainers and two traveling mechanics did work on wiring that day and all damaged equipment was restored by 4:00 P. M., Sunday. Claimant and his gang again worked on the site on Monday, January 27th, to complete final cleanup operations.

The Carrier maintains that an emergency existed as a result of the derailment and persisted until 4:00 P. M., Sunday, January 26th, when all the damaged switches were repaired. The position of the Carrier is that so long as substitute procedures had to be effected to compensate for the loss of the inoperable crossover switches an emergency prevailed. The Brotherhood asserts that no emergency existed after the temporary repairs opening the main line were accomplished on January 23rd, since thereafter no train or switching movement was prevented from reaching its intended destination and only minor delay and inconvenience was experienced.

We hold that an emergency situation did not exist on Saturday, January 25th. We make this finding not only because the Carrier was able to operate all its trains at near normal scheduling and was able to continue to serve all its customers, but also in consideration of the manner in which the situation was handled by the Carrier. After the temporary repairs which opened the main line were accomplished, the Carrier obviously did not treat the condition as one which required immediate and urgent attention. It apparently was not considered important enough to expedite delivery of materials to the site so that Claimant's gang could be put to work on Thursday, nearly 12 hours after the derailment occurred, notwithstanding the fact that all materials were available in Huntington. Additionally, no attempt was made to enlist other crews for this work even though Huntington is a major repair station for the Carrier and the Reclamation Plant is located nearby and presumably the manpower was available. These actions could be expected to have been undertaken by the Carrier if it deemed the condition one of true urgency and necessity.

The contract clearly indicates that the parties intended that Claimant would not be required to work on his sixth day unless the Carrier was faced with a pressing and compelling situation which left it no other choice. We do not believe that the Carrier's actions after the temporary repairs were made leave the impression that it considered the state of affairs that serious. The Carrier is not permitted to declare an unexpected and unwanted occurrence an emergency and then proceed at its convenience to end the emergency, suspending in the meanwhile an important contract benefit.

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

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November, 1970.