

Award No. 18357
Docket No. SG-18476

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, particularly the intention of Rule 7(d), when it required Foreman of Maintainers W. K. French to work on Saturday, December 23, 1967, assisting to make routine tests of the interlocking and signal system at Terminal Tower in Hoboken, New Jersey.

(b) Carrier should now be required to compensate Mr. French for eight (8) hours at his time and one-half rate of pay because of this violation. (Carrier's File: 163-Sig.)

EMPLOYEES' STATEMENT OF FACTS: Claimant W. K. French is a monthly rated Foreman of Maintainers with headquarters at Hoboken, New Jersey, with Sunday as his assigned rest day.

On Friday, December 15, 1967 a switch was damaged and Mr. French was called to make the necessary repairs and tests to the signal and interlocking system. All tests and checks indicated the system was operating as intended. Monday, December 18 another complete test of the signal and interlocking system was made and found to be operating properly.

Notwithstanding that two (2) complete inspections had been made of the signal and interlocking system in which everything was found to be operating as intended, the Superintendent ordered Mr. French to again test the system on Saturday, December 23, 1967. A complete check was again made of the signal system in accordance with the Superintendent's instructions. The answer was identical to the other two complete inspections, that is, all apparatus was functioning as intended.

Inasmuch as ordinary maintenance or construction work is not to be required on the sixth day of the work week, Mr. French asked that he be paid 8 hours at overtime rate for service performed on Saturday, December 23, 1967. Payment however was refused by the Carrier.

CARRIER'S STATEMENT OF FACTS: At 5:10 P. M., December 15, 1967, Train 1121 consisting of engine 1401, with five coaches, was backing from track 3L to No. 4 Depot track at Hoboken Terminal Tower interlocking plant. Dwarf signal R-66, which is the signal for switch No. 79, was in stop position and the train was nevertheless operated through switch 79, picking the switch point of same. Coach 2492 was derailed and then rerailed itself. It was necessary to block switch 79 and pull equipment back before signals to tracks 1 through 5 could be restored. Switch 79 was repaired at 9:45 P. M. and Signal Department made ICC inspection of switches and signal equipment and nothing found wrong. On Monday, December 18, 1967, the signal employees were stationed at the plant during the heavy commuter traffic to insure that it was functioning properly.

In preparation for an investigation to be held on December 26, 1967 to determine the cause and responsibility for the accident, Superintendent J. G. Drake directed the equipment in train 1121, engine 1401, be set up in the identical manner as it was on the day of the accident so the events occurring on the evening of December 15, 1967 could be reconstructed. This was scheduled for Saturday morning, December 23, 1967, since it was planned on running the equipment in the interlocking plant and attempt to change the signals and switches such as it was alleged happened on the date of the accident. This was performed several times and in various sequences resulting in tying up the first five tracks of the plant into the terminal, in an effort to learn if the switches and signals could be changed while the cars were over them. Such an operational check could not be performed during the week since there are over 200 trains moving in and out of Hoboken terminal, not including numerous back-up movements of equipment in the area. Thus the test was ordered between the hours of 7:00 A. M. and 11:00 A. M., on Saturday, when only 13 trains operate in and out of Hoboken terminal.

Superintendent Drake directed Asst. Signal Supervisor W. Meyer and Foreman of Maintainers W. K. French, hereinafter referred to as claimant, to be present at this special operational check to witness the check, be available in the event of any signal difficulties and to insure that the signals and related equipment functioned properly.

Mr. French holds a monthly rated position with a six-day work week under Rule 7 with Sunday as assigned rest day. Copies of pertinent correspondence is not attached based upon the fact it is the Organization's procedure to attach same to its submission. In the case the Organization does not do so, Carrier will furnish as a part of its rebuttal submission.

OPINION OF BOARD: On Saturday, December 23, 1967, Claimant was required by Carrier to make certain tests in conjunction with operational tests being made with equipment which had been involved in a derailment occurring on December 15, 1967.

The tests in question were made according to Carrier on Saturday because of the heavy commuter schedule during the week.

Claimant bases his claim on an alleged violation by Carrier of Rule 7(d) of the Agreement, claiming that inasmuch as ordinary maintenance or construction work is not to be required on the sixth day of the work week, he is entitled to be paid 8 hours at overtime rate performed on said Saturday,

December 23, 1967; that under said Rule 7(d), the privilege of the second off day was extended to monthly rated employees; that unless an emergency existed, Claimant could not properly be used on the date in question without additional payment.

Carrier's position herein is that the use of Claimant on the date in question, which was a work day of his work week for which he is compensated in his monthly rate, was proper and no additional compensation is due; that the Organization failed to prove that Claimant did ordinary maintenance or construction work; that the conditions requiring Claimant's services were not ordinary but extraordinary; that the work Claimant was called on to perform was on the sixth day which was a work day of his work week and not a rest day.

Rule 7(d) provides as follows:

"(d) Where employees now have a bulletined or assigned rest day, conditions now applicable to such bulletined or assigned rest days shall hereafter apply to the sixth day of the work week. Where employees do not now have a bulletined or assigned rest day, ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week."

It is undisputed that Claimant had Sunday as an assigned rest day. Therefore, the 1st part of Rule 7(d) comes into play, namely: "Where employees now have a bulletined or assigned rest day, conditions now applicable to such bulletined or assigned rest days shall hereafter apply to the sixth day of the work week. . . ." Thus, in effect the sixth day of Claimant's work week, Saturday in this instance, became a rest day for Claimant. Since he worked on said day, under the provisions of Rule 7(a) of the Agreement, he is entitled to additional payment for overtime on said rest day.

Carrier points out that Claimant only worked 4 hours on said date and Claimant is claiming 8 hours' overtime for work on said date. No evidence was presented in the record showing the actual time Claimant worked on the claim date. Claimant is entitled to overtime pay for only the time he actually worked on said date and thus we will remand the claim to the property so that the parties can ascertain the amount of time actually worked by Claimant on the date in question, to which Claimant is entitled to be paid for at the punitive rate.

Carrier relied on this Board's Award No. 17993, involving the same parties herein and the application of said Rule 7(d). The Board therein applied the second part of Rule 7(d) concerning employees who do not have an assigned rest day. Inasmuch as in the instant dispute we are not dealing with an employee not having an assigned rest day, we find said Award not controlling in this dispute.

Therefore, for the aforesaid reason, we will sustain this claim to the extent set forth aforesaid.

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 in accordance with the Opinion and Findings.

AWARD

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December, 1970.