Award No. 18786
Docket No. SG-19235

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

On behalf of Signal Maintainer L. T. Mayes for thirty-seven (37) hours at overtime rate for time worked on territory of C. M. Wood while Mr. Wood was on vacation (November and December 1968). (Carrier's File: G-265-18)

EMPLOYES' STATEMENT OF FACTS: Signal Maintainer C. M. Wood, whose normal work week is forty hours, was on vacation for a three-week period during November and December, 1968. During that vacation period, Mr. L. T. Mayes, a Signal Maintainer assigned to another territory, worked a total of thirty-nine straight-time hours and six and one-half overtime hours on Mr. Wood's territory.

Under date of January 8, 1969, the Brotherhood's Local Chairman initiated a claim on behalf of Mr. Mayes for thirty-nine hours overtime pay (omitting the six and one-half hours overtime) on the basis Carrier violated the 25% burden provisions of Article 10 of the December 17, 1941 Vacation Agreement, which reads:

"10. (a) An employe designated to fill an assignment of another employe on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employe, such employe shall receive the rate of the relief position. If an employe receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employe in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employe will be paid.

(b) Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.

(c) No employe shall be paid less than his own normal compensation for the hours of his own assignment because of vacations to other employes."

The claim was handled to a conclusion on the property, up to and including conference discussion with the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibit Nos. 1 thru 9.

By reference thereto, the National Vacation Agreement of December 17, 1941, all subsequent amendments, and the Official Interpretations of June 10, July 20, and November 12, 1942, are made a part of the record herein.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: This case involves Signal Maintainer L. T. Mayes, whose assigned headquarters point was Madisonville, Kentucky, and Signal Maintainer C. M. Wood, who was assigned to the adjoining territory.

Maintainer Wood was on vacation November 21 through December 13, 1968, and during part of this period Mayes performed some work on Wood's territory. The employes alleged that Mayes worked 37 hours on Wood's territory, and that this was more than 25% of Wood's work load.

Claim was, therefore, filed in favor of Mayes for 37 hours at the overtime rate. Carrier saw no basis for the claim, and it was declined. Copies of correspondence exchanged in connection with the file are attached and are identified as Carrier's Exhibits "A" through "J."

There is on file with the Third Division a copy of the current working rules agreement and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier did not provide a vacation relief worker when Signal Maintainer C. M. Wood was on vacation November 21 through December 13, 1968. During this period Signal Maintainer L. T. Mayes, the Claimant herein, assigned to the adjoining territory, performed some work on Maintainer Wood's territory.

The Petitioner alleges a violation of Articles 6 and 10 of the Vacation Agreement.

Article 6 of the Vacation Agreement does not require a vacation relief worker unless the lack of one would burden other employes or the vacationing employe on his return. (Award 15061.) In our present case the Petitioner has not presented probative evidence to prove that remaining signal employes were burdened or that the vacationing employe was burdened after he returned from vacation. We must conclude, therefore, that Article 6 of the Vacation Agreement was not violated. (Awards 15061, 11282.)

So far as Article 10 of the Vacation Agreement is concerned, the Petitioner contends that Mayes worked on vacationing Wood's territory more than 25 per cent of the normal working hours, and thus exceeded the maxi-

mum limit provided in Article 10(b). The Carrier maintains that by eliminating estimated driving time, or travel time consumed by Claimant Mayes, and certain time that he allegedly spent on his own territory, left 29 hours and 30 minutes worked on Wood's territory, which was 30 minutes short of the 25 per cent maximum allowable under Article 10(b).

Rule 60(a) of the working Agreement provides:

> "(a) It is understood and agreed that operating or riding on track motor cars or other conveyances used in lieu of motor cars, is work and is to be paid for as such under the provisions of this agreement."

The record shows that Claimant used a hi-rail truck as transportation, the operation of which was work under Rule 60(a). Therefore, the Carrier was in error in not counting the time consumed in traveling on the hi-rail truck on Wood's territory as time worked. It is our conclusion, therefore, that the 25 per cent maximum in Article 10(b) was exceeded. We will sustain the claim for 37 hours, limited to straight-time rate.

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 this Division of the Adjustment Board has jurisdiction over the dis-

AWARD

Claim sustained to extend indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1971.

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