

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19990**

Docket Number SG19712

Burl E. Hays, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Chicago and North Western Railway Company

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) The Carrier violated the Signalmen's Agreement, in particular Articles 6 and 10 of the Vacation Agreement, when it failed to assign a relief **man** to the **Lodi**, Wis., territory during the absence of the regular assignee T. C. **Malin**, between September 8 thru 11, a period of 4 days.

(b) The Carrier **now** be required to compensate the **employees** at the punitive rate of pay, in addition to what they have already been paid -- Mr. M. Miller, Sig. Mntr., Baraboo, Wis.; Mr. **J. Sornsen**, Sig. **Mntr.**, Madison, **Wisc**; and Mr. **J. Krupela**, Leader Signalman, Madison, Wis. (Carrier's File: 79-8-67)

OPINION OF BOARD: Mr. T. C. **Malin**, regular Signal Maintainer in the Lodi, Wisconsin, territory of the Chicago and North Western Railway Company, was on vacation for four days (32 hours), September 8, 9, 10, 11, 1970. The regular relief **man** was also absent during this period of time because of personal illness. On September 8, **two** Signal employees headquartered at Madison, **Wisconsin**, worked four and one-half hours each **on the Lodi** territory. They were Signal Maintainer **J. Sornsen** and Leader Signalman J. Krupela. On September 10, Signal Maintainer M. **J. Miller**, headquartered at Baraboo, Wisconsin, worked four hours on the **Lodi** territory.

The dispute in this case **arose** because Carrier did not provide a vacation relief worker instead of using the above mentioned **man** **on the vacationing man's territory**. The Brotherhood contends this constitutes a violation of Articles 6 and 10(b) of the Vacation Agreement, and asks that Carrier **now** be required to compensate these three **men** at the punitive rate of pay, in addition to what they have already been paid.

As regards Article **6**, according to **the interpretation** of the Vacation Agreement by Referee Morse, any claimant must show that he was overworked and not reasonably able to do the work; that he was "burdened" by the imposition of the additional duties imposed on him. In the instant case, two of the claimants worked four and one-half hours and the other claimant worked four hours

during a four day working period. We do not believe that they were burdened, **overtaxed** or oppressed by these few hours of work in the four day period. We do not think the Carrier has violated **Article 6**. (Award 17374 by **Rambo**; 15171 by Lynch; 13175 by Wolf; and many others).

Article **10(b)** is more of a pay rule. It fixes a percentage of work distribution at 25 percent. The construction placed upon its provisions, **un-**Like upon Article 6, should be confined principally to this area. In the instant case the Brotherhood contends **that** Claimants spent a total of **13½** hours on the Lodi territory during the regularly assigned maintainer's vacation period which constituted more **than** 25 percent of his work during that period. This amounted **to** only 30 minutes more than 25 percent. Apparently Carrier agrees with this statement because on Page 55 of the Record in Carrier's Answer, we find the following statement:

"In view of the fact that the **employees** from adjoining territories were required **to** spend only 30 minutes in excess of 25% of the claimant's regularly assigned hours in performing work on his territory, there is no support for this claim."

Referee Morse, in his Interpretation on the question: "Meaning and intent of Article **10(b)** stated:

"It is the opinion of the referee that both parties to this dispute have attempted to read meanings into Section (b) of Article L0 not intended or contemplated when the parties agreed to the language on December 17, 1941...."

By the same token, Referee Morse's rather lengthy Interpretation provides both the Carrier and Claimants many quotations in support of their positions.

Article **10(b)** of the Vacation Agreement states:

"...**However**, not more than the equivalent of twenty-five percent of the work load of a given vacationing **employee** can be distributed among fellow **employees** without the hiring of a relief worker...."

Carrier contends that the 30 minutes in excess of 25% is not sufficient **to** sustain **the** claim. Claimants maintain that any amount of time over 25% is sufficient, whether it be 30 minutes or 30 hours. The line must be drawn some place. We are inclined to agree with Claimants' view.

However, with regard to Claimant **J. Krupela**, whose position permitted him to be assigned work anywhere in this district, we believe he would have been doing this particular work whether regular Signal Maintainer **Malin** had been on vacation or not. Thus, failure of Carrier to furnish a relief employe did not in any way create any additional work for him.

Award Number 19990
Docket Number SG-19712

Page 3

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 in accordance with Opinion.

A W A R D

Claims of Sornsen and Miller sustained. Claim of Krupela denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.