

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21014
Docket Number SG-20827

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claims of the General **Committee** of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway company:

Claim No. 1.

For and on behalf of Signalman D. O. Jones, Gang 1681, for an additional payment of 176 hours at his straight time rate and 168 hours at one-half his straight time rate (\$5.27 per hour in March - \$5.52 per hour in April, 1973) for the period March 20 through April 18, 1973 as indicated below; account required to suspend work of his permanent assignment on Gang 1681 to relieve a temporary vacancy (maintenance position) at Centennial Yard, Fort Worth, Texas, which act violated his seniority rights and resulted in an arbitrary change in his assigned working hours and rest days in violation of Rule 30, 43, 44, **45(a)**, 28(k), 12 and 11 of the Signalmen's Agreement. **Payment as claimed** is due under Signal Agreement **Rules 15, 15(a), 19** and 28(k).

Straight-time pay as follows account required to suspend work during his regular working hours to absorb overtime.

Date	Hours
March 20, 21, 22 & 23	- 32
26, 27, 28, 29 & 30	- 40
April 2, 3, 4, 5 & 6	- 40
9, 10, 11, 12 & 13	- 40
16, 17, 18	- 24
	176

Having been paid only straight-time for the following hours he is due an additional half-time for these hours account they were worked outside his regular assigned hours and on rest days.

Date	Shift	<u>Rest Days</u>	<u>Hours</u>
March 20 & 21	3rd		16
24 & 25	1st	Yes	16
26	2nd		8
27 & 28	3rd		16
31	1st	Yes	8

April L	1st	Yes	a
2	2nd		a
3 & 4	3rd		16
7 & 8	1st	Yes	16
9	2nd		a
10 & 11	3rd		16
14 & 15	1st	Yes	16
16	2nd		8
17	3rd		8
			<hr/> 168

/Carrier's File: G 315-687

Claim No. 2

For and on behalf of Signelman D. O. Jones, Gang 1681, for **an** additional payment of 64 hours at his straight time hourly rate and 72 **hours at** one-half his straight time hourly rate (\$5.52 per hour) for the period June 3 through June 13, 1973 as indicated below; account required to suspend work of his permanent assignment on Gang 1681 to relieve **a** temporary vacancy (maintenance position) **at** Centennial Yard, Fort Worth, Texas, which act violated his seniority rights and resulted in **an** arbitrary change in his assigned working hours and rest days in violation of Rules 30, 43, 44, 45(a), 28(k), **12** and **11** of the Signalmen's Agreement. Payment as claimed is due under **Signal** Agreement Rules 15, **15(a)**, **19** and 28(k):

Straight-time pay as follows **account** required to suspend work during regular assigned working hours to absorb overtime.

<u>Date</u>	Hours
June 4, 5, 6, 7 & 8	40
11, 12, & 13	24
	6 4

Having been paid only straight-time for the following hours he is due an additional half-time payment for these hours account they were worked outside his regular assigned hours **and/or on** rest **days**.

<u>Date</u>	<u>Shift</u>	<u>Rest Days</u>	<u>Hours</u>
June 3	1st	Yes	a
4	2nd		a
5 & 6	3rd		16
9 & 10	1st	Yes	16
11	2nd		8
12 & 13	3rd		16
			<hr/> 72

/Carrier's File: G 315-767

OPINION OF BOARD: Both Claims herein involve situations in which **Claimant** was required to suspend work during his regular working hours as a member of **a** construction Signal **Gang** in **order to** work a vacation relief assignment **asa maintenance** signalman with different shifts and different rest days. The **rates** of pay on the two positions were identical.

Petitioner's position is bottomed on the premise that Carrier has no right to require permanently assigned employees to fill temporary vacancies (vacation **or** otherwise) against their will. It is contended that Carrier should have used one of several available unassigned signalmen to fill the vacancies. Petitioner's arguments are based on the seniority, bulletining and assignment rules as well as the Vacation Agreement.

Carrier argues that the Vacation Agreement specifically allows Carrier to blank the position of an assigned employee and place that employee in a vacationer's position with all the working conditions of that latter position applied. Further Carrier argues that **it is** a basic **perogative** of management to send a regular assigned employee to **fill** a temporary vacancy; compensation of such temporarily transferred employees is covered by Rules 16 and 17 of the Schedule Agreement.

It is apparent that by practice (as well as by special agreement over a period in the past) Carrier has always filled vacation vacancies in the signal maintenance crew at this location by asking for volunteers in the local signal construction gang **~** and awarding the temporary assignment to the senior volunteer. It is also evident that in the event there were no volunteers, Carrier would assign the junior **signalmen** from the construction crew to **the** vacation vacancy. The General Chairman decided to terminate this practice shortly before the instant claims were filed, thus precipitating this dispute.

The Organization's theory in these Claims is that **Claimant's** temporary transfer to the vacation assignment was invalid and therefore he should be compensated for on the basis that the hours and conditions of his regular assignment were operative during **all** the days of the temporary work. After careful evaluation and study of all the rules cited by Petitioner, we must conclude that there is no rule support for Claimant's position. We note that in the Vacation Agreement in **Rule** 12(b), the last sentence reads:

"When the position of a vacationing **employe** is to be filled and regular relief **employe** is not utilized, effort will be made to observe the principle of seniority."

Under the provisions of the **Rule** above, had Carrier not filled the assignment with the Claimant but rather had used an unassigned **employe**, it could well have been faced with a valid Claim by Claimant, based on his seniority. It **ist** be noted that under **no** circumstances was Carrier required to use an **un-ained** unassigned signalman for the vacancies herein. We have examined prior

Awards of this **Board** dealing with this same issue and find that Carrier's position is sound (see Awards 17916, 17222, and 16306 for example). We find that Carrier acted within the provisions of the Vacation Agreement in making the assignments herein, and there is no showing that Claimant was unduly burdened when he returned to his regular position, which had been blanked.

Claimant did not work **more** than eight hours in any one day or more than 40 hours in any work week. The overtime rule requires Carrier to pay overtime when an **employee** works outside of the established work period of the position he is filling. In this instance Claimant had the work days and rest days of the vacation **relief** assignment; the Claim **must** be denied.

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.

A W A R D

Claim denied.

NATIONAL **RAILROAD ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 3Lst day of March 1976.