

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk Southern Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company (SOU):

CASE NO. 1

Claim on behalf of Signal Maintainer C B Wham, headquarters St. George, S C, assigned working hours 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rules 48 and 49 when they failed or refused to pay him his monthly salary in the amount of \$3003.89 for the month of January 1990, paying him in the amount of \$2827.64, making his pay short in the amount of \$131.25 for the month of January 1990.
- (b) Carrier now be required to compensate Signal Maintainer C B Wham in the amount of \$131.25 that he was shorted for the month of January 1990, and is to be in addition to any other pay he has received. Carrier's File No. SG-GNVL-90-11. Gen'l. Chmn's. File No. SR-3190. BRS Case No. 8344.SOU.

CASE NO. 2

Claim on behalf of Monthly paid Traveling Signal Maintainer C.B. Wham, headquarters St. George, S C, assigned working hours 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rule 49 among others for the month of March 1990 when they refused or failed to accumulate and pay Signal Maintainer C.B. Wham for hours worked or held for duty in excess of his 213 base hours for the month of March 1990.

- (b) Carrier now be required to compensate monthly paid Traveling Signal employee, Signal Maintainer C.B. Wham for 24.8 hours of overtime worked and held for duty in excess of 213 hours for the month of March 1990 or \$525.76 in addition to any other pay he has received or due him for the month of March 1990 account of Carrier failed or refused to pay him for the full amount of time he was worked and held for duty the month of March 1990. Carrier's File No. SG-GNVL-90-16. Gen'l Chmn's File No. SR-4090. BRS Case No. 8364-SOU.

CASE NO. 3

Claim on behalf of monthly paid Traveling Signal maintainer C.B. Wham, headquarters St. George, S C, assigned work days Monday through Friday 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rule 49, when they refused to accumulate the 48 hours held for duty on April 7 and April 28, 1990 toward his 213 base hours and pay him overtime after his time exceeded his 213 base hours for he (sic) month of April 1990.
- (b) Carrier now be required to compensate Signal Maintainer C.B. Wham for the time worked and held for duty in excess of his 213 base hours for he (sic) month of April 1990 in the amount of 18 hours at his overtime rate of pay or \$381.60 that his pay was short for the month of April 1990 because Carrier refused to accumulate his time that he was held for duty for 24 hours each day on April 7 and 28, 1990. Carrier's File No. SG-GNVL-90-17. Gen'l Chmn's File No. SR-4390. BRS Case No. 8365. SOU.

CASE NO. 4

Claim on behalf of Monthly paid Traveling Signal Maintainer C.B. Wham, headquarters St. George, S C, assigned working hours 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rule 49 among others for the month of May 1990 when they refused or failed to accumulate and pay Signal Maintainer C.B. Wham for hours worked or held for duty in excess of his 213 base hours for the month of May 1990.

- (b) Carrier now be required to compensate monthly paid Traveling Signal employee, Signal Maintainer C.B. Wham for 38 hours of overtime worked and held for duty in excess of 213 hours for the month of May 1990 or \$805.60 in addition to any other pay he has received or due him for the month of May 1990 account of Carrier failed or refused to pay him for the full amount of time he was worked and held for duty the month of May 1990. Carrier's File No. SG-GNVL-90-18. Gen'l Chmn's File No. SR-4990. BRS Case No. 8367.SOU.

CASE NO. 5

Claim on behalf of monthly paid Traveling Signal Maintainer C.B. Wham, headquarters St. George, S C, assigned work days Monday through Friday 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rule 49, when they refused to accumulate the 75 hours worked and held for duty during the month of June 1990 toward his 213 base hours and pay him overtime after his time exceeded his 213 base hours for he (sic) month of June 1990.
- (b) Carrier now be required to compensate Signal Maintainer C.B. Wham for the time worked and held for duty in excess of his 213 base hours for he (sic) month of June 1990 in the amount of 45 hours at his overtime rate of pay or \$954.00 that his pay was short for the month of June, 1990 because Carrier refused to accumulate his time that he was held for duty for 24 hours each day on June 2, 24 and 30, 1990. Carrier's File No. SG-GNVL-90-19. Gen'l. Chmn's File No. SR-5490. BRS Case No. 8368. SOU

CASE NO. 6

Claim on behalf of Monthly paid Traveling Signal Maintainer C.B. Wham, headquarters St. George, S C, assigned working hours 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rule 49 among others for the month of July 1990 when they refused or failed to accumulate and pay Signal Maintainer C.B. Wham for hours worked or held for duty in excess of his 213 base hours for the month of July 1990.

- (b) Carrier now be required to compensate monthly paid Travleing Signal employee, Signal Maintainer C.B. Wham for 24 hours of overtime worked and held for duty in excess of 213 hours for the month of July 1990 or \$508.80 in addition to any other pay he has received or due him for the month of July 1990 account of Carrier failed or refused to pay him for the full amount of time he was worked and held for duty the month of July 1990. Carrier's File No. SG-GNVL-90-20. Gen'l Chmn's File No. SR-5790. BRS Case No. 8369-SOU.

CASE NO. 7

Claim on behalf of monthly paid Traveling Signal Maintainer C.B. Wham, headquarters St. George, S C, assigned work days Monday through Friday 7:30 AM to 4:30 PM, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Rule 49, when they refused to accumulate the hours he was worked and held for duty during the month of August 1990 toward his 213 base hours and pay him overtime after his time exceeded his 213 base hours for the month of August 1990 in the amount of 51.5 hours overtime.
- (b) Carrier now be required to compensate Signal Maintainer C.B. Wham for the time worked and held for duty in excess of his 213 base hours for he (sic) month of August 1990 in the amount of 51.5 hours at his overtime rate of pay or \$1,091.80 that his pay was short for the month of August, 1990 because Carrier refused to accumulate his time that he was held for duty and worked outside assigned working hours." Carrier's File No. SG-GNVL-90-21. Gen'l Chmn's. File No. SR-5890. BRS Case No. 8370.SOU.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute involves seven Claims, identified as Cases No. 1-7. Case No. 1 will be treated separately; Cases No. 2-7 are identical except for the month involved and will be treated as one Claim.

Claimant is a monthly-rated Traveling Signal Maintainer employed under the provisions of Rule 49 of the Agreement. Rule 49 provides that his monthly rate of pay covers all service performed, including overtime, holiday service and service on the sixth day of the work week, up to 213 hours in a calendar month. The Rule also provides that actual time worked or held for duty exclusive of assigned rest days in excess of the 213 hours in a calendar month will be paid for at the overtime rate.

In the event that Claimant's services might be required on the sixth day of the work week, he was instructed to give his Supervisor a telephone number where he would be available to be contacted on that day.

Turning first to Case No. 1, where the Carrier had deducted \$131.25 from Claimant's pay for missing a standby call on January 13, the sixth day of the work week, the record shows that Claimant's actual time worked for the month of January was 180 straight-time hours and 28 1/2 overtime hours. Had Claimant been available for service on January 13, any time worked would have had to be paid at the overtime rate, and we find that his pay is thus not subject to reduction for missing a call. Carrier has therefore failed to sustain its burden of proof in justifying this deduction, and we will sustain the Claim in Case No. 1.

Turning next to Cases 2-7, the Organization contends that Claimant was being held for duty on the sixth day of each work week covered by the Claims, and should be compensated at the overtime rate for those days whether or not he performed any service.

After reviewing the record in this dispute, it is clear that all that was required of Claimant was that he be available for contact by telephone on the sixth day in the event his services were required. Since his monthly rate of pay includes compensation for the sixth day, whether or not he performs any service, the Carrier can legitimately require that he make himself available in this manner, and we find that the Organization has failed to carry its burden of proof that he was being held for duty on those days.

The Board has previously denied Claims involving this identical issue in disputes between the same parties (Third Division Awards 29209 and 13121) and we find no reason to depart from those precedents. We will accordingly deny the Claims in Cases No. 2-7.

A W A R D

Claim sustained in accordance with the Findings.

Form 1
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Award No. 29296
Docket No. SG-29807
92-3-91-3-187

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.