

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36770
Docket No. SG-37109
03-3-02-3-63

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co:

Claim on behalf of D. P. Ventress, K. J. Thibodeaux, T. J. Thibodeaux, C. J. Hebert and C. M. Haddad, for compensation at their respective overtime rates plus skill differential for their actual travel time and four hours per day on various days beginning September 24, 2000, through November 19, 2000. Account Carrier violated the current Signalmen's Agreement, especially Rules 13, 15, 45 and the Letter of Agreement dated November 21, 1973, when it failed to compensate the Claimants at their overtime rates plus skill differential for the time they spent traveling from Lafayette, Louisiana, to Morgan City and Schriever, Louisiana, and then failed to pay the required four hours overtime to hold the Claimants away from their headquarters. Carrier's File No. 35 01 0008. General Chairman's File No. 01-008-BNSF-121-T. BRS File Case No. 11848-BNSF.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The named Claimants are members of a Signal Construction Gang headquartered at Lafayette, Louisiana. On the Sundays cited in the Statement of Claim, they traveled from their headquarters in Lafayette to their work location for the following week. They traveled over the highway in a Company truck to either Morgan City or Schriever, Louisiana, depending on their work location for the week.

The Carrier paid the Claimants straight-time wages for the travel time from Lafayette, Louisiana, their headquarter point, to Morgan City or Schriever, Louisiana, depending on where their work assignment was.

The Organization contends that the Carrier should have paid the Claimants at the time and one-half rate for all travel time on their rest days. (The Sundays cited in the Statement of Claim were the rest days of the Claimants). It also contends that the Carrier should pay the Claimants the skill level differential for all time traveled, as well as the four hours overtime required when the Carrier holds employees away from their headquarters.

The Board reviewed the record in detail. As a result of that review, the Board concludes that the Carrier's position is the correct one. The Carrier relies on Rule 47 for support in this instance. Rule 47 reads as follows:

"RULE 47.

SIGNAL CONSTRUCTION CREWS AT FIXED POINT

- A. Headquarters points will be established by the Carrier for employees on signal crews who are not furnished camp cars

and who are reimbursed for actual reasonable costs of meals, lodging and travel time when away from such home station as provided in Rule 13 or Rule 14. Such employees shall not be reimbursed for costs of meals and lodging at headquarters point.

- B. When sent away from headquarters beginning and ending of day's work shall be at a designated point at maintainer's headquarters, railroad depot or motel-hotel at the town where motel-hotel accommodations are provided.
- C. An employee working away from his fixed headquarter point may, rather than staying overnight in a lodging facility (hotel or motel), claim mileage up to a maximum of 120 miles for a round trip to return home. On days so claimed, no evening meal allowance will be paid on the day going or a breakfast meal allowance on the morning of return.
- D. Signal Construction Crews established in accordance with Rule 47 working away from assigned fixed headquarters during workweek will, unless being held to perform service on their rest days or traveling conditions do not permit, be returned to their headquarters for rest days. Such employees, including the foreman, will be compensated at straight-time rate for travel time involved whether operating or riding in a vehicle.

It is further understood that if the employees referred to above are held for rest days' service they will be allowed a minimum of four hours at time and one-half rate for each day held.

- E. When lodging is provided for personnel assigned to Signal Crews, single rooms will be provided."

Paragraph D of Rule 47 clearly states that members of a construction crew will be paid straight time while in travel status. The Carrier refuted each argument presented by the Organization. It pointed out that the skill differential is only paid

while an employee is actually performing work. It further pointed out that the Claimants were not held away from home to perform service on their rest days. Finally, the Carrier argued that signal crews have been compensated for travel on a straight-time basis for many years without a claim for overtime pay ever being paid. The Organization made no attempt in the record to refute this statement. Consequently, the Board has no recourse but to deny the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of December 2003.

Labor Member's Dissent

To Third Division Award - 36770

Referee Rodney E. Dennis

Obviously the Majority failed to read the Organization's Submission and/or the handling of this dispute as it was progressed on the property. This is abundantly clear wherein, the majority held that "...the Carrier argued that signal crews have been compensated for travel on a straight-time basis for many years without a claim for overtime pay ever being paid. The Organization made no attempt in the record to refute this statement."

While it could be understood that the majority overlooked the fact that extensive arguments and evidence was presented to refute this assumption. It is shocking that the Majority additionally overlooked the clear language of the Agreement.

As noted the Agreement specifically address payment for traveling on rest days.

Rule 47. SIGNAL CONSTRUCTION CREWS AT FIXED POINT.

"A. Headquarters points will be established by the carrier for employees on signal crews who are not furnished camp cars and who are reimbursed for actual reasonable costs of meals, lodging and travel time when away for such home station as provided in Rule 13 or Rule 14..." (emphasis added)

Rule 13. SERVICE AWAY FROM HEADQUARTERS

C. "...When traveling on rest days and holidays actual time at time and one-half rate with a maximum of eight hours at time and one-half rate will be allowed..." (emphasis added)

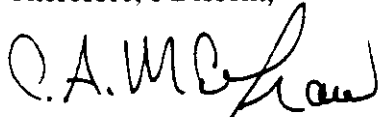
Rule 15. OPERATING OR RIDING MOTOR CARS, HIGHWAY TRUCKS OR AUTOMOBILES

Operating or riding on track cars, automobiles or highway trucks by direction of the Carrier is work and will be compensated as such." (emphasis added)

The actions of the Carrier are not only unreasonable, they do not make sense. By using Carrier's rationale, an employee could spend all day Saturday driving to a work site at the direction of the Carrier and all day Sunday driving back to the original work location, thereby not having any rest days. As noted in Third Division Award 34174, the Board correctly held that **"the travel required of the Claimant on Sunday, March 2, 1997, took place on his rest day. He was, therefore, deprived of the full two rest days to which he would have been entitled. Under such circumstances, he is entitled to payment at the time and one-half rate for the time traveled on his rest day..."**

Based on the complete record that was disregarded by the majority and the foregoing dissent, this issue is not resolved and the Award and Findings should not be considered in future cases.

Therefore, I Dissent,

A handwritten signature in black ink, appearing to read "C.A. McGraw". The signature is fluid and cursive, with the first name "C.A." and last name "McGraw" clearly distinguishable.

C.A. McGraw, Labor Member
National Railroad Adjustment Board