

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY

DISPUTE.—“*Claim of J. E. Bruce*, Signal Maintainer, for the difference in what he was paid March 1st, 8th, and 29th, 1934, and what he would have earned at time and one-half rate for these days.

“*Claim of G. R. Snow*, Signal Maintainer, for the difference in what he was paid July 10th and 17th, 1934, and what he would have earned at time and one-half rate for these days.

“*Claim of J. M. Abshier*, Signal Maintainer, for the difference in what he was paid July 11th and 18th, 1934, and what he would have earned at time and one-half rate for these days.”

THE FACTS AS DISCLOSED BY JOINT SUBMISSION.—The Management requested that the signal employees agree to a reduced work week, the employees agreed to this and five days per week was placed into effect June 25, 1932. It became necessary for the Management to call for service these employees on their relief days. The employees claimed the time and one-half rate for services performed on these relief days, the Management declined the payment of time and one-half rate, paying instead the straight time rate for these days. Neither of the days involved in these claims were Sundays or holidays, but all were scheduled relief days under reduced work week in effect.

Mr. Bruce was used to bond rail where new rail was being laid on his section.

Mr. Abshier and Mr. Snow were used account of a train wreck. Mr. Abshier worked on Mr. Snow's section with him at wreck.

FURTHER FACTS AS DISCLOSED BY THE RECORD.—The short week (5 days) was verbally agreed to by the employees at a conference on June 18th, 1932, but no understanding was had with the employees at the time the 5-day-week assignment was agreed to as to the basis of pay for time worked on lay-off days.

RULES INVOLVED.—The schedule rules involved are:

ARTICLE II. Hours of Service, Overtime, and Calls.

SEC. 10. *Sundays and holidays*.—Except as otherwise provided herein, time worked on Sundays, Fourth of July, and Christmas will be paid for at one and one-half time on actual minute basis.

SEC. 11. Overtime hours, continuous with regular working hours, shall be computed on the actual minute basis at the rate of time and one-half. Employees will not be required to work more than ten (10) hours without being permitted to have a second meal period. Time taken for meals will not terminate the continuous-service period.

SEC. 12. Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours at time and one-half rate; if held longer than two (2) hours, they will be paid at the time and one-half rate computed on actual minute basis.

Time of employees so notified will begin at the time required to report and end when released. Time of employees so called will begin at the time called and end at the time they return to designated point at home station.

An employee so called less than two (2) hours before his regular starting time will be paid at time and one-half time until the regular starting time, and thereafter at straight time for the regular hours.

POSITION OF EMPLOYEES.—It is contended by the employees that the verbal agreement in respect to the short work week did not modify or in any way affect the application of any rules in the written agreement effective April 1, 1924, except in the reduction to the short 5-day week, and that they should be compensated under the rule above quoted; that when the short week went

into effect the assignment of the employees involved in the claims are five (5) specified days to work and one (1) specified day off; that the employees had no regular working hours on their off days, and having been called to perform on those days, such work was outside of regular working hours.

POSITION OF CARRIER.—It is contended by the Carrier that while there was no understanding with the employees or their representatives at the time of the modified agreement upon the 5-day week as to the basis of payment for any time worked on lay-off days, yet there is no provision in the schedule calling for payment at time and one-half rate for work performed on such days, and that the only rules which provide for time and one-half rate are Article 2, Section 10, which covers service performed on Sundays and holidays, and Article 2, Section 11, which covers overtime continuous with regular working hours, and Article 2, Section 12, which is the Call rule, and covers calls after the day's work is completed, and the men called back which would be overtime hours under the provisions of Section 11, and that such call rule merely guarantees a minimum of two (2) hours at the time and one-half rate for hours worked or less; that the principle of time and one-half rate was established to prevent, as far as possible, by penalizing the Carrier for working men on Sundays and holidays or working them overtime after the regular 8-hour assignment, or calling them out during their rest period after they performed a day's work; that the services performed under the circumstances in this case were "obviously not contemplated in the negotiation of the call rule" (Section 12) in that rarely if ever prior to or shortly after the agreement upon this rule it was necessary to cut the time of regular forces one or two days per week, and that therefore such rule is not applicable.

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

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

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Paul Samuel was called in as referee to sit with this Division.

The Referee is of the opinion, in which a majority of the Third Division concurs, that the modification of the rule reducing the week to a five-day work week was doubtless made for the mutual benefit of the parties, that is to say for the benefit of the Carrier so that much unnecessary expense of labor could be eliminated, and for the employees so that part-time work could be continued, the practical effect being that the carrier would be called upon to pay for only five days of regular service and the employee would have an extra day for himself and in which he was released from duty. In other words, "the regular work hours" were reduced to five days a week. It is also reasonable to suppose that the carrier would not, under ordinary circumstances, need the services of the signal employees on the sixth day, and it is equally reasonable to suppose that under some circumstances or unsettled conditions, that some services of the employees might be needed on a sixth or "relief day." This being so the employees should be paid and the carrier in this instance was willing to and did pay at the straight-time rate.

There was, however, only one modification of the rule, i. e., the reduction to a five-day week. Otherwise the rules obtain in their entirety, including Section 12, Article 2, which provides in part as follows:

"Section 12. Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours, will be paid a minimum allowance of two (2) hours at time and one-half rate; if held longer than two (2) hours, they will be paid at the time and one-half rate computed on actual minute basis.

"Time of employees so notified will begin at the time required to report and end when released. Time of employees so called will begin at the time called and end at the time they return to designated point at home station * * *."

The Referee is of the further opinion and which is concurred in by the majority members of this Division, that in order to sustain the Carrier's contention in this case that Section 12 of Article 2 should have been modified

concurrently with the modification of the 5-day work week, and the failure of the carrier to obtain such modification leaves Section 12, of Article 2 in force and effect and that:

AWARD

The claim of the employees is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 26th day of June 1935.