

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

DISPUTE.—"Shall Signal Maintainer L. J. Fay be paid at the overtime rate from 11:15 p. m., June 7th, to 6:00 a. m., June 8th, 1933?"

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

The carrier and the employee 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.

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.

Mr. L. J. Fay is a regularly assigned Signal Maintainer with home station and railroad headquarters at St. Maries, Idaho. The territory definitely assigned to Signal Maintainer Fay extends eighteen miles east of St. Maries and twelve miles west of St. Maries, a total of thirty miles.

He is responsible for the efficient operation of all the signal apparatus on that territory and in the performance of his duties he uses a track motor car to reach any point where work is to be performed and to return to his headquarters each and every night.

Mr. Fay's regular working hours are from 8 a. m. to 12 noon and from 1 p. m. to 5 p. m. with one hour for lunch, these hours having been established by bulletin covering this maintainer's position and territory.

Mr. Fay had completed his regular tour of duty at 5 p. m. June 7th, 1933, and was called for emergency service at 5:15 p. m. to repair telegraph line trouble between St. Maries and Calder, which latter point is located twenty-three miles east of St. Maries. The line trouble in question was the result of storm conditions and normally would have been cleared by the telegraph department employees.

He arrived at Calder at 11:15 p. m., June 7, and was instructed to tie up for the night at that point, and resume service at 6 a. m. June 8, which he did, and after making the necessary repairs enroute, arrived at his home station, St. Maries, at 5 p. m. on the same date, and was thereupon released from duty. For such services Mr. Fay received compensation at his regular hourly rate for time worked during his regularly assigned tour of duty (8 a. m. to 5 p. m. on each day) and at punitive overtime rate from 5:15 p. m. to 11:15 p. m. June 7, and from 6 a. m. to 8 a. m. June 8. He claimed compensation at time and half rate from 11:15 p. m. June 7 to 6 a. m. June 8 at overtime rate, but claim was denied although carrier made reimbursement for expenses for meals and lodgings incurred while away from home station.

Claimant relies on Sections (f) and (v) Rule 2 to support his claim, which Sections are as follows:

"(f) Employees' time will start and end at a designated point but more than one (1) such point may be named within a specified territory such as terminal territory."

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

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

while the carrier asserts that Sections (k) and (l) of Rule 2 supports its position that claimant was paid the proper compensation. The sections read as follows:

"RULE 2

"Sec. (k). Hourly rated employees sent from home station to perform work and who do not return to home station on the same day will be allowed time for traveling or waiting in accordance with following section (l) of this rule. All hours worked will be paid for—straight time for straight-time hours, and over-time rate for overtime hours. Actual expenses will be allowed at the point to which sent if meals and lodging are not provided by the Company or if camp cars to which employes are assigned are not available."

"Sec. (l). Employees (except those monthly rated) who do not return to home station on the same day, when not in camp cars and traveling by direction of the management will be allowed actual time for traveling or waiting during the regular working hours. Actual time, not to exceed eight (8) hours, at the straight-time rate, from the time required to report to the time of arrival at the point to which sent, will be paid as full compensation for traveling or waiting between the end of the regular hours of one day and the beginning of the regular hours of the following day when sleeping accommodations are not available. Actual expenses but no time will be allowed for traveling or waiting between the end of the regular hours of one day and the beginning of the regular hours of the following day when sleeping accommodations are available. This applies to traveling maintainers only except as mentioned in preceding section (k)."

Claimant Fay maintains that he was released from duty at 5 p. m. at his home station and then called to perform duties outside of and not continuous with regular working hours and that he was entitled to a time and one-half rate until he returned to his designated home station; that the Agreement existing between the carrier and the Brotherhood of Railroad Signalmen of America contemplates that signal maintainer Fay had an established territory and a home station with regular hours and that he was generally known as a "stationary employee" which is defined in Decision No. 707 and reaffirmed by Decision No. 1538 of the United States Labor Board; that there are relief maintainers who regularly travel from point to point over large territories, who, because of varying conditions of service and changing point for starting and ending of work time and riding and waiting time, fall within sections (k) and (l) of Rule 2.

The carrier maintains that since claimant Fay, an hourly rated signalman, was reimbursed for meal and lodging expenses incurred while away from "home station", was furnished sleeping accommodations and performed "no service" between 11:15 p. m. and 6 a. m., that Fay is not entitled to such time and one-half rate; that Section (l) Rule 2 is not a compensation rule and that it simply means that if "released" at a point not at this "home station" the employee's time shall end when so released, but if he be required to "return to designated point at home station", his compensation shall in such event be computed continuously until released at such home station.

The rules above quoted are obviously in sharp conflict and ambiguous. They should be further negotiated and clarified between the parties for the purpose of avoiding future disputes and to the end that an undue financial burden shall not be imposed upon the carrier when the time element is a greater and more important factor than existed in this particular case.

Because of the peculiar circumstances which exist in this dispute, especially the intensity of the work to be performed in a short period of time under unusual conditions and in an emergency, we are of the opinion that the benefit of doubt should be resolved in favor of the employee with the understanding

that this award shall not be regarded as a precedent under different circumstances, especially where the time element is a more controlling factor. Therefore, it is our

AWARD

The claim is sustained, but carrier will be credited with amounts paid to Mr. Fay for reimbursement made to him for meals and lodging.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 5th day of November 1935.