

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE.—“(a) Claim of W. F. Honeyman for compensation for time lost on his regular assigned position on first trick, February 16, 1935, when instructed to report at 3:00 p. m. to fill a temporary assignment on the second trick.”

“(b) Claim of W. F. Honeyman for compensation at the rate of time and one-half for service performed on Sunday, February 17, 1935, which was his regular assigned day off duty and which was worked.”

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.

The dispute being deadlocked, Wm. H. Spencer was called in as Referee to sit with this Division as a member thereof.

The ultimate facts of the controversy are not seriously in dispute. The settlement of the controversy depends upon the proper interpretation of certain rules in the Agreement between the parties, dated June 12, 1923.

In February 1935, the carrier granted a leave of absence of thirty days to Signal Maintainer M. B. Darnall, effective February 16. It temporarily assigned E. Piburn, an assistant signal maintainer, to the vacancy thus created. Piburn, as an assistant signal maintainer, was assigned to the second trick, 3:00 p. m. to 11:30, with thirty minutes for a lunch period. His regularly assigned day off duty was Friday.

Sometime prior to the time when Darnall's leave was to begin, the Signal Supervisor asked Mr. Honeyman, whose seniority entitled him to the assignment, whether he would accept Piburn's position during Darnall's absence. He replied that he would. Honeyman, as a signal helper, was regularly assigned to the first trick from 8:00 a. m. until 4:30 p. m., with thirty minutes for a lunch period. His regularly assigned day off duty was Sunday.

Later, Honeyman was directed not to report on the morning of February 16 at 8:00 a. m. on his regular assignment, but to report at 3:00 p. m. of the same day on the temporary assignment.

Honeyman reported on the new assignment at the time directed and continued on it through March 16. He worked on Sunday, February 17, which was his day off duty under his assignment as a helper; and was not given a day off duty until Friday, February 22, the day off duty assigned to Piburn as an assistant signal maintainer.

The carrier, conceiving it to be its obligation under Section 4 of Article VI, paid Mr. Honeyman time and one-half both for the first shift on the new assignment and for the first shift of the position to which he was next assigned.

POSITION OF EMPLOYEE.—In support of the first branch of his claim, the petitioner urged that the carrier violated Section 5 of Article VI by causing him a loss of time between the hours of 8:00 a. m. and 3:00 p. m. on February 16. The section relied upon provides:

“Employees will not be required to suspend work during regular work periods to absorb overtime.”

In support of the second branch of his claim, the petitioner contended that under Section 4 of Article VI a transfer from one shift to another is not completed until the employee has finished two tours of duty on the new shift;

that Sunday, February 17, on which he worked, was still on his regular assignment as a helper, and was, accordingly, his day off duty; and that, therefore, under Section 2 of Article VI, he was entitled to be compensated at the rate of time and one-half for the Sunday in question.

POSITION OF CARRIER.—As to the first part of the claim, the carrier contended that its direction to Honeyman not to report on February 16 until 3:00 p. m. was not made for the purpose of absorbing overtime, but for the purpose of avoiding duplication of assignments; and that, therefore, Section 5 of Article VI has no application.

As to the second part of the claim, the carrier contended that Section 4 of Article VI is not susceptible of the interpretation herein asked for; and that, therefore, the dispute does not fall under Section 2 of Article VI, justifying the application of the overtime rule for Sunday, February 17.

As to both parts of the claim, the carrier contended that since Honeyman voluntarily and without coercion on its part accepted the position of assistant signal maintainer at a higher rate of pay and in the exercise of his rights of seniority, Section 6 of Article VIII of the Agreement applies. This section provides:

"Employees accepting positions in the exercise of their seniority rights will do so without causing extra expense to the carrier."

The carrier asked that the Board "indicate that Mr. Honeyman has been overpaid to the extent of two half days." This request was based upon the carrier's contention that under a correct interpretation of the rules it was not obligated to pay the penalty rate for the first shift of the temporary assignment and for the first shift of the reassignment.

CONCLUSIONS OF THE DIVISION.—Viewing the record as a whole, the Division arrives at these conclusions:

(1) Section 6 of Article VIII does not preclude the award of the claims herein made if under the rules of the Agreement they are otherwise well founded.

While it may be conceded that Honeyman in taking the new assignment was exercising his seniority rights, it does not follow that the rule cited protects the carrier against all expense incident to an exercise of seniority. Indeed, by differentiating "expense" and "extra expense", the rule assumes that the carrier may have to incur some expenses in a situation like that under consideration.

In the opinion of the Referee, the rule was not intended to protect the carrier against expenses incident to the application and operation of the rules of the Agreement between the parties.

(2) It was Honeyman's right to work on his regular shift on February 16. The carrier for the purpose of absorbing a part of the overtime incident to the new assignment, or with that necessary effect, suspended Honeyman's work on the day in question in violation of Section 5 of Article VI. The carrier's contention that the suspension of work was directed for the purpose of avoiding duplication of assignments is inadequate in the absence of evidence showing that as a result of his having exercised his seniority rights it would have been impossible or impracticable for Honeyman to have worked during the period of his assignment as a helper for which he makes claim.

(3) The carrier's failure to allow Honeyman to have a day off in seven during the period from February 11 to February 22 was in violation of Section 2 of Article VI.

For the purpose of this decision it may be assumed that Honeyman's assignment as assistant signal maintainer became effective on February 16 at the beginning of the second trick, and that under this assignment Friday became Honeyman's day off duty. In the opinion of the Referee, however, these assumptions do not relieve the carrier of its unqualified obligation under Section 2 of Article VI to give the employee a day off in seven or to pay him the overtime rate for such day if worked.

AWARD

(a) The claim is sustained.

(b) The claim is sustained.

By Order of Third Division:

Attest:

NATIONAL RAILROAD ADJUSTMENT BOARD.

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 20th day of January 1936.