

Award No. 3028

Docket No. SG-2985

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim that R. E. Wilhelm, whose regular assignment was that of assistant signal maintainer, second shift, tower 5, be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Friday, April 3, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, third shift, tower 5, taking the place of Dale Francis, the employe regularly assigned to the position. Amount claimed \$3.80.

(b) Claim that R. E. Wilhelm be paid the difference between straight time rate of 86 cents per hour and the time and one-half rate for the eight-hour tour of duty worked on his regular assignment as assistant signal maintainer, second shift, tower 5, on Thursday, April 9, 1942, following his release from being required to perform service on third shift, tower 5, from April 3 to 8, 1942, inclusive. Amount claimed \$3.44.

(c) Claim that R. E. Wilhelm, whose regular assignment was that of assistant signal maintainer, second shift, tower 5, be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Friday, July 17, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, second shift, Grand Avenue, taking the place of W. A. Hill, the employe regularly assigned to the position. Amount claimed \$3.80.

(d) Claim that R. E. Wilhelm, whose regular assignment was that of assistant signal maintainer, second shift, tower 5, be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Friday, August 21, 1942 (his assigned day off duty), when he was required by the management to fill the position of relief signal maintainer, second shift, at towers 2, 4, 6, and 9, taking the place of O. W. Sloan, the employe regularly assigned to the position. Amount claimed \$3.80.

EMPLOYEE'S STATEMENT OF FACTS: R. E. Wilhelm was regularly assigned as assistant signal maintainer, second shift, tower 5, with Friday as his regularly assigned one day off duty in seven. This assignment required him to work Sundays at the straight time rate, as provided in Article VI, Section 2, which reads:

"Work performed on Sundays and the following legal holidays namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation, shall be consid-

with pay agree that the duly authorized representatives of the employees, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

In addition to the foregoing it is the Carrier's request that your Honorable Board review the written opinion of the Carrier members of your Board on this subject, in their "Dissent to Award No. 2340, Docket CL-2430," and that your Board reconsider and set aside the decision in Award 2430 by dismissing this case account lack of jurisdiction.

OPINION OF BOARD: Claimant was a regularly assigned assistant signal maintainer with Friday as his regularly assigned one day off duty in seven.

The claim consists of four specified items based upon four alleged violations of the current rules agreement. Item (b) is based on an alleged violation of Article VI, Section 4, dealing with shift changes. Items (a), (c) and (d) are based on alleged violations of Article VI, Section 2, which states the rule applicable when an employee is required to work his assigned day off duty. The claims are for the difference between the straight time rate and the time and one-half rate for the days specified in the claims. The record shows that the agreement was violated as alleged.

The evidence shows that the work performed for which the time and one-half rate is claimed, grew out of the granting of vacations to the regular occupants of the positions worked. It is the contention of the Carrier that the Vacation Agreement of December 17, 1941, the parties to this dispute being parties to that agreement, controls the disposition of the foregoing claims and requires a finding of a lack of jurisdiction on the part of this Board to determine them, or, if jurisdiction is assumed, a denial of the claims under the terms of the Vacation Agreement.

These issues have been fully determined by our Award No. 3022, Docket SG-2979, adopted this date. For the reasons stated in that Award, we hold that the schedule agreement controls the disposition of these claims and that an affirmative award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That an affirmative award is authorized by the controlling agreement.

AWARD

Claims (a), (b), (c) and (d) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1945.

DISSENT TO AWARD NO. 3028, DOCKET SG-2985

The Award in this case having declared that the issues have been determined by Award No. 3022, Docket SG-2979, the dissent to Award No. 3022 is applicable to the award in this Docket SG-2985.

(s) C. C. Cook
(s) R. H. Allison
(s) A. H. Jones
(s) R. F. Ray
(s) C. P. Dugan