

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that the Carrier improperly deducted eight days' pay from the March 1945 monthly salary of S. R. Mackenzie, Signal Foreman, Decatur, Illinois.

(b) Claim that this deduction is contrary to past practices, also the current Signalmen's Agreement makes no provision for such deduction.

(c) Claim that the Carrier pay this improper deduction of eight days' pay to S. R. Mackenzie.

EMPLOYEES' STATEMENT OF FACTS: From March 12 to 19, 1945, both dates included, S. R. Mackenzie did not work at his regular occupation as Foreman at Decatur, Illinois account illness, and because of this involuntary absence the carrier deducted eight days' pay from Mackenzie's salary covering the month of March 1945.

Signal Foremen working for this carrier have been paid on a monthly basis for many years and it has not been the practice to make deductions from their salaries for such periods of illness. Also, as indicated in claim (b), there is no provision in the current agreement for any deduction of this nature to be made from the monthly salaries of Foremen. Rule 60 provides for a minimum monthly salary of \$259.30 for Foremen.

This grievance covering a claim for eight days' pay was first presented to the carrier under date of March 30, 1945 by the General Chairman, who is the duly authorized representative of the claimant. This claim has been progressed in good faith up to and including the highest officer of the carrier designated to handle grievances of this nature. A satisfactory settlement has not been obtained and it is being referred to this Board for disposition as provided in the Railway Labor Act, as amended.

There is an agreement between the parties to this dispute bearing effective date of September 1, 1944, covering the rates of pay, hours of service and working conditions of signal department employees, including Foremen. Rules 17 and 60 of the agreement dated September 1, 1944 were revised on May 8, 1945. The revisions are not relevant nor applicable to this dispute. The current Signalmen's Agreement is on file with this Board and we respectfully request that it be considered a part of the record in this case.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the carrier should not make deductions from the monthly salary of a foreman in the signal department when the foreman is involuntarily absent from

There is no rule in the agreement covering signalmen which provides for or contemplates that employes covered by that agreement will be paid for time lost while out of service on account of illness and, therefore, it is obvious that the submission of this alleged dispute to the Board is without question an attempt on the part of the Committee to obtain a new rule in a manner contrary to the provisions of Section 6 of the Railway Labor Act as amended.

It will be noted from the correspondence submitted herewith as Carrier's Exhibit "A" that the Committee did not, in the handling of this alleged dispute, contend that the alleged claim of Gang Foreman Mackenzie for compensation for the time off duty on account of illness from and including March 12, 1945 to and including March 19, 1945 was supported by any rule of the agreement effective September 1, 1944; and in that connection attention is directed to the fact that it has never been the practice in the application of the agreement covering employes represented by the Brotherhood of Railroad Signalmen of America to compensate employes for time off duty on account of illness and the Committee cannot cite a single instance where such an allowance has been made, which is further evidence of the fact that the request of the Committee in the alleged dispute referred to herein involves a request for a new rule.

The record in this case does not meet the requirements of the Supreme Court of the United States in its Decision No. 160, Elgin, Joliet & Eastern Case.

The foregoing definitely shows that the alleged claim set up in the Committee's ex parte Statement of Claim is entirely without basis and, therefore, the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: Claimant was off work from March 12 to 19, 1945, on account of illness and Carrier deducted eight days' pay from his monthly salary as a foreman. It is the contention of the Claimant that he is entitled to his full monthly salary under the Signalmen's Agreement.

The claim is based on Rule 60 of the current Agreement, the applicable part of which are as follows:

"The following minimum rates of pay are hereby incorporated in and made a part of this Agreement and they shall remain in effect until and unless changed in the manner provided by the Railway Labor Act:

"(a) Test Foreman, Gang Foreman, \$259.30 per month.

* * * * *

"(f) The monthly rate of foremen as provided by Paragraph (a) of this rule will cover all service performed during the calendar month except that when a foreman is assigned to supervise a gang regularly assigned to work in excess of eight (8) hours per day such foreman shall be paid, in addition to the monthly rate, overtime at the rate of time and one-half of the hourly rate for the actual time worked in excess of eight (8) hours per day by the gang he is supervising.

The hourly rate of foremen shall be determined by dividing the monthly rate by 243-1/3."

Prior to September 1, 1944, Signal Foremen were not covered by an agreement governing rates of pay, rules and working conditions. On that day an agreement became effective fixing the minimum rate of pay for a foreman at \$259.30. There is no rule concerning pay for time lost on account of illness. It seems clear to us that the Agreement made contemplated the performance of eight hours work on each and every day of the month and all overtime as well except where provision is otherwise made in the Agree-

ment. The Organization urges that it was the practice of this Carrier to make no deductions in the monthly pay of an employe absent on account of illness. We think any such practice, even if it did exist, is superseded by the Agreement unless it is preserved by the Agreement or an agreed upon interpretation thereof. Awards 1678, 2483 and 2981, cited in support of the claim, are based upon specific provisions of the controlling agreement or agreed upon interpretations thereof. In the absence of such, an agreement fixing minimum rates of pay contemplates payment only for days worked and days the employe was available for work. But if the employe is not available to perform it on each and every day, he is not entitled to pay, in the absence of an agreement to the contrary, for the days he was not available to perform his work.

This interpretation is confirmed by the provision in Rule 60 that the hourly rate of a foreman shall be determined by dividing the monthly rate by $243\frac{1}{3}$. This figure is calculated by multiplying the number of days in the year (365) by 8 hours, a day's work, and dividing by 12 to obtain the figure $243\frac{1}{3}$. The monthly rate set forth in the Agreement clearly contemplates that it is a minimum monthly rate for a month's work of eight hours or more per day except as overtime is specifically provided for. We find no basis for an affirmative award.

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 the Employes involved in this dispute are respectively carrier and employes 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 the contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.