

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE SEABOARD AIR LINE RAILWAY

STATEMENT OF CLAIM: Claim that the employes listed below be compensated at the rate of time and one-half for all time held for service by direction of Mr. O. F. Hackler, Supervisor of Telephones and Signals, from regular quitting time Saturday, July 28, 1945, until regular starting time Monday morning, July 30, 1945, less any amounts actually paid by the carrier:

D. W. Hemingway, Signal Maintainer, Henderson, N. C.

July 28, 1945	-----14	hours 30 minutes	@	\$1.56
July 29, 1945	-----24	"	@	1.56
July 30, 1945	-----8	"	@	1.56

Total ----46 hours 30 minutes @ 1.56 —\$72.54

J. E. Thompson, Assistant Maintainer, Henderson, N. C.

July 28, 1945	-----14	hours 30 minutes	@	\$1.27½
July 29, 1945	-----24	"	@	1.27½
July 30, 1945	-----8	"	@	1.27½

Total ----46 hours 30 minutes @ 1.27½—\$58.29

J. A. Geoghegan, Signal Maintainer, La Crosse, Va.

July 28, 1945	-----7	hours	@	\$1.56
July 29, 1945	-----24	"	@	1.56
July 30, 1945	-----8	"	@	1.56

Total ----39 hours @ 1.56 —\$60.84

J. M. Land, Signal Maintainer, Moncure, N. C.

July 28, 1945	-----7	hours	@	\$1.56
July 29, 1945	-----24	"	@	1.56
July 30, 1945	-----8	"	@	1.56

Total ----39 hours @ 1.56 —\$60.84

E. E. Utley, Helper, Moncure, N. C.

July 28, 1945	-----7	hours	@	\$1.17
July 29, 1945	-----24	"	@	1.17
July 30, 1945	-----8	"	@	1.17

Total ----39 hours @ 1.17 —\$45.63

H. K. Hagwood, Signal Maintainer, Raleigh, N. C.

July 28, 1945	----- 9	hours 40 minutes	@	\$1.56
July 29, 1945	----- 24	"	@	1.56
July 30, 1945	----- 8	"	@	1.56

Total-----41 hours 40 minutes @ 1.56 —\$65.00

F. C. Parham, Assistant Signal Maintainer, Raleigh, N. C.

July 28, 1945	----- 9	hours 40 minutes	@	\$1.42 ½
July 29, 1945	----- 24	"	@	1.42 ½
July 30, 1945	----- 8	"	@	1.42 ½

Total-----41 hours 40 minutes @ 1.42 ½ —\$59.38

EMPLOYEES' STATEMENT OF FACTS: The above named employees are assigned to maintenance sections with headquarters at locations shown in the claim. The regularly assigned hours for maintenance employees are from 8:00 A. M., until 12:00 Noon and from 1:00 P. M., until 5:00 P. M., daily except Sundays. Sunday is a regularly assigned off day and no work is performed by maintenance employees on Sunday except in cases of emergency when being held subject to call in accordance with Rule 15 of the agreement.

There is an agreement between the parties, effective December 16, 1942, which among other things provides:

Rule 15 (a) Employees who are subject to call because of the requirements of the service will notify the person designated by the management where they may be called and will respond promptly when called.

(b) For the purpose of minimizing the number of employees held subject to call on Sundays and holidays, a schedule will be prepared by the supervisory officer to show positions which will be subject to call on Sundays and holidays. Men occupying such positions as shown by the schedule will be subject to call on Sundays and holidays designated, and in consideration thereof will be released after four hours' service on the Saturday following the day held subject to call without loss of compensation. It is understood that employees filling positions scheduled as subject to call under the provisions of this rule will, when called, not be confined to work on any particular section or territory. The scheduling of men hereunder will not prohibit the use of other employees on Sundays or holidays, and other employees so used will be paid under Rule 12 or Rule 14 as the case may be. The use of employees not scheduled will not disturb the schedule as set up for men subject to call on Sundays and holidays. Men scheduled will be paid for actual service performed under Rules 12 or 14, as the case may be.

(c) Where there are assistant positions and men occupying them are qualified, the maintainer position and the assistant position may be alternated in being held available for call on Sundays and holidays.

(d) The schedule for employees occupying positions held subject to call on Sundays and holidays will be prepared by the supervisory officer with the purpose in view of distributing the work equally according to requirements of the service and may be changed from time to time.

(e) Where Sunday and a holiday fall together, the position whose turn it is to be subject to call will protect for the Sunday and the holiday, and the four-hour period of release will not be increased in connection therewith.

(f) This rule does not apply to monthly rated traveling employees covered by Rule 41.

hold themselves in readiness for service.) We take the definite position that if these men had been instructed to remain in place for service if needed, Rule 15-(b) provides that they will only receive four (4) additional hours' pay every other week-end as compensation for time held subject to call and, therefore, there is no basis for the claim that the time and one-half rate should be allowed for each hour while subject to call.

Considering our second contention that "THE CLAIMANT EMPLOYEES WERE NOT HELD SUBJECT TO CALL ON JULY 28TH, 29TH, AND 30TH AS CLAIMED, BUT WERE INSTRUCTED TO WORK THEIR REGULARLY ASSIGNED HOURS OVER THE WEEK-END", when it was anticipated that trouble would be experienced with the signals on Sunday, July 29th, these claimants were notified as follows.

"On account of rainy weather and signal trouble, I want each one of you to work **regular hours** over the week-end." (Emphasis added)

Claimants Hagwood and F. C. Parham were the only two employees who literally complied with the instructions, that is, they worked from 8:00 A. M. until 12:00 Noon, and from 1:00 P. M. until 5:00 P. M. on the 29th. Claimants D. W. Hemingway and J. E. Thompson could not literally comply with the instructions due to the fact that trouble was experienced on their section prior to their regular starting time, and in view of the fact that they had worked approximately twenty (20) hours just prior to their regular starting time on Sunday, July 29th, then it would have been unreasonable for the Company to have required them to also work their regularly assigned hours on the date in question except in an extreme emergency. The remaining three claimants evidently interpreted the instructions as meaning that they were to simply hold themselves in readiness if needed. We, of course, do not understand how such an interpretation could have been placed on the instructions. The Committee took the position, when this matter was discussed in conference, that these employees did not have any assigned hours on Sunday, and therefore it was impossible for the employees to comply with the instructions issued. Concerning this matter, we find that Rule 19 of the current Agreement is so clear in its meaning that there should not have been any doubt whatsoever in the minds of the employees as to just what was desired by the District Supervisor. Rule 19 in part is as follows:

"Hourly rated employees traveling in camp cars by direction of the Company will be allowed actual time at the straight time rate for traveling or waiting during the regular working hours and for Sundays and holidays during **hours established for work periods on other days.**"

Also, it has always been understood on this property that when employees are instructed to work their regular hours on Sunday, they are to observe the same hours as observed on other days.

It is the Carrier's position that, first, these men were not held subject to call from 5:00 P. M. July 28th until 8:00 A. M. July 30th and, therefore, are only entitled to pay in accordance with Rules 12 and 14 which were quoted in the Carrier's Statement of Facts, and if they had been held subject to call, they would only be entitled to pay in accordance with Rules 12 and 14, and in addition thereto four (4) hours at the straight time rate as provided for by Rule 15-(b).

These employees were all given the benefit of the doubt, in that they were paid four (4) additional hours at the straight time rate just as if they had been notified to hold themselves in readiness if needed.

For the above reasons we respectfully ask that the claims be declined.

OPINION OF BOARD: Under the provisions of Rule 15 the employees in the Signal Department here involved are scheduled subject to call each alternate week end. They are free from call each succeeding week end from 12:00 Noon Saturday to 8:00 a.m. the following Monday. In consideration of standing subject to call each alternate week end they are released after four hours service on the Saturday following the day held subject to call without

loss of compensation. This arrangement is one by schedule, designed to have men subject to call each week end and to have men free from call each week end. The rule makes provision for compensation to those held subject to call under the schedule, but makes no provision for compensation to the men who on their free from call week end are called upon to perform services. Such a contingency is not within the language or evident purpose of the rule. The men involved in this claim were scheduled and subject to call the week end of July 21 and 22, 1945. Their free from call week end under the schedule was July 28, 29, 1945.

On the morning of July 28, 1945, the Supervisor wired the employees involved, "I want each of you to work regular hours over the week-end". This was a recognition that the Supervisor knew the men were free from call. There is obviously some vagueness in the exact meaning of the message. However, the Carrier's official, over whose signature the message was sent, advised that "as there are no regular assigned hours for a week end I expected every maintainer on the Virginia division to be in place and subject to call at any time during this week end". We accept the construction of the message which the party sending it put upon it.

These men were then ordered to stand subject to call for the entire period of their scheduled free from call week end. All did so, some working and others standing subject to call.

As pointed out, Rule 15 makes no provision for payment under such circumstances. Rule 13 provides "Overtime hours, either prior to or following and continuous with regular working period, shall be computed on the actual minute basis and paid for at the rate of time and one-half".

It seems to us that this decision both as to facts and rule is controlled by Award 1675. The Carrier says the contrary is true because "the scheduled agreements involved did not specifically provide how employees would be paid for stand by service * * * and the claimants specifically requested to be off and were refused". The answers to these contentions are clear. Rule 15 provides how employees shall be paid for stand by service performed under the schedule. But this stand by service involved here was not a scheduled stand by service. Here the Claimants did not need to request to be off on the week end involved. The schedule, under Rule 15, gave them that right.

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 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 the position of the employees is sustained. Payment to be made under the provisions of Rule 13, less any amounts actually paid by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of September, 1946.