Award No. 3733
Docket No. SG-3745

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of F. A. Paske, Signal Department employe with assigned headquarters at Grand Avenue Tower, for

(a) Time and one-half for services performed Sunday, July 5, 1942;
(b) Time and one-half for shift change on Monday, July 6, 1942; and
(c) Time and one-half for shift change on Saturday, July 11, 1942.

EMPLOYES' STATEMENT OF FACTS: F. A. Paske is regularly assigned as assistant signal maintainer at Grand Avenue Tower, St. Louis, Missouri, with regular hours of service 8:00 A. M. to 5:00 P. M. daily, except Sunday, with one hour for lunch. He was not displaced nor was his position abolished.

Starting at 4:00 P. M., Sunday, July 5, 1942, Mr. Paske relieved the regular signal maintainer at Grand Avenue Tower during the hours 4:00 P. M. to 12:00 midnight and continued on that assignment until midnight, Friday, July 10, 1942. Mr. Paske returned to his previous assignment at Grand Avenue Tower at 8:00 A. M., Saturday, July 11, and worked the regular hours of the position thereafter.

There is an agreement between the parties effective September 1, 1939.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the Carrier violated the provisions of Rule 4 (a-1) when it refused to compensate Mr. Paske at rate of time and one-half for services performed Sunday, July 5, 1942, and it violated the provisions of Rule 3 (1-4) when it declined to pay him at time and one-half rate for the first shift when shifts were changed July 6 and 11 of the same year. The Carrier did, for its own benefit and convenience, arbitrarily remove Mr. Paske from a position he had secured by virtue of his seniority and declined to compensate him in accordance with the provisions of the agreement between the parties. He was not displaced nor was his position of assistant signal maintainer at Grand Avenue Tower abolished.

There have been no implementing or supplementing agreements between the parties to this dispute tending to nullify Rules 4 (a-1) and 3 (1-4).

The position of assistant signal maintainer at Grand Avenue Tower, regular assignment of Mr. Paske, is scheduled to have Sundays and holidays as off duty days. Work performed on such days must be paid for at the rate of time and one-half except that employes necessary to the continuous operation of the Carrier and who have one regular day off duty in seven, Sunday,

Whether Referee Morse's ruling was correct or incorrect, the parties had solemnly bound themselves to accept and be governed by that ruling. It is respectfully submitted that the function of the National Railroad Adjustment Board is to give effect to the agreements between the parties, and not to change them. This Division, in making the foregoing pronouncement, ignored the agreement of July 20, 1942 between employes and the carriers, and particularly that portion thereof reading:

> "The parties have agreed that your decision upon the issues herewith submitted shall be final and binding."

It is the position of the Carrier that it is the province of this Division to make awards interpreting agreements between a Carrier and its employes, and that your Board has not the jurisdiction to set aside, cancel, change, annul, or by its action supersede existing agreements. In their joint letter of July 20, 1942 to Referee Morse the parties agreed that his decision upon the matters at issue was to be final and binding. That agreement upon the final and binding nature of the referee's decisions is still in full force and effect and is controlling.

It is the position of the Carrier that Awards 3022-3029, inclusive, of this Division are not controlling in claims (b) and (c) because they are clearly erroneous in that such awards overrule a binding agreement between the parties.

For the reasons hereinabove stated it is the position of the Carrier that the claims of the employes presented in this docket should be denied.

OPINION OF BOARD: The Claimant, F. A. Paske, was a regularly assigned Signal Department employe, working 8 A. M. to 5 P. M. daily, with Sunday off.

Starting Sunday, July 5, 1942, the Claimant was assigned to and worked as a vacation relief worker on a different shift on the same signal tower for the regular signal maintainer whose daily tour of duty was 4 P. M. to 12 midnight and whose day off was Saturday.

Claimant worked this position until midnight Friday, July 10, and on Saturday, July 11th, returned to his own regular assignment.

This claim is for time and one-half for—

(a) Time worked on Sunday, July 5, Rule 4 (a-1)
(b) Time worked on July 6, Rule 3 (1-4)
(c) Time worked on July 11, Rule 3 (1-4)

That part of Rule 3 (1-4) on which this claim is founded is as follows:

> "Employes changed from one (1) shift to another by direction of the Management will be paid overtime rates for the first shift of each change. Employes working two (2) shifts or more on a new shift shall be considered transferred."

Since the time worked by Claimant on Monday, July 6, was not the first shift which he worked on the position to which he was assigned as a vacation relief worker, his claim for that time must be denied. Rule 3 (1-4) on which Claimant relies covers only the first shift on a change.

The shift the Claimant worked on Sunday, July 5, the first shift as vacation relief worker, and the first shift back on his own position on July 11, were first shifts on a change of shifts within the express provisions thereon in Rule 3 (1-4).

The work performed by Claimant on Sunday, July 5, was also expressly covered by the Sunday and Holiday Service Rule, Rule 4 (a-1).

The Carrier insists, however, that these rules in the 1939 agreement are superseded by the Vacation Agreement of December 17, 1941, and the va-

rious interpretations thereof by Referee Wayne L. Morse made pursuant to an agreement of the parties for arbitration in which they agreed that the Referee's decision upon the issue submitted should be final and binding.

The Carrier relies chiefly on Article 12(a) of the Vacation Agreement which provides:

> "Except as otherwise provided in this Agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu thereof under the provision hereof."

This rule was submitted to the Referee for interpretation, the Carriers contending (pages 95 and 96 of Vacation Agreement booklet) that the prohibition in said Article 12 (a) against greater expense "takes precedence over any schedule rule which would create such expense."

The Referee decided against the Carriers on this contention, saying (p. 98):

> "As the Referee has stated elsewhere in this decision, throughout the negotiations which led up to the vacation agreement, it was definitely understood by the parties that the vacation plan should not be administered independently of existing working rules, but rather, that in those instances in which existing working rules, if strictly applied, would produce unjust results, they should be modified through the processes of collective bargaining negotiations conducted between the parties or if necessary through those procedures of the Railway Labor Act which provide for the settlement of disputes."

and again (p. 99):

> "(5) That the provisions of existing working rules agreements as to relief workers are by implication a part of the vacation agreement, binding upon the parties except in so far as they are modified, changed, or waived as the result of negotiations conducted under Article 13."

The Carrier also leans heavily on the opinion of the Referee (p. 101) on an illustration submitted by the Carriers of a shop craft employe claiming time and one-half for the first shift on vacation relief work and on first shift on return to his own position. If the shop craft employes were working under the same schedule rule as Rule 3 (1-4) here in question, the Referee's opinion on the illustration is contradictory to his decision on the interpretation of Article 12 (a) as set out on pages 98, 99 and 100.

In Awards 2340 and 2484 this Division, Edward F. Carter, as Referee, decided that it was the intent of the parties in the Vacation Agreement "that existing rules and agreements were to remain in effect unless changed by negotiation." In Award 2537, Blake, Referee, and Award 2720, Tipton, Referee, the same result was reached.

In Award 3022, this Division, Referee Carter, after having fully considered the same contentions as have been made by the Carrier in this case, decided that the rules of the schedule agreement should prevail over provisions of 12 (a) of the Vacation Agreement as interpreted by Referee Morse.

In view of the above we are of the opinion that Claims (a) and (c) should be sustained and Claim (b) should be denied.

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 Employe involved in this dispute are respectively carrier and employe 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 current agreement authorizes an affirmative award on Claims (a) and (c) but does not authorize an affirmative award on Claim (b).

AWARD

Claim (b) denied. Claims (a) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1947.

DISSENT TO AWARD 3733—DOCKET SG-3745

The record upon which this Award is predicated clearly indicates that the Vacation Agreement Committee dealt with but failed to agree on a decision in disposition thereof and to that extent the record differs from the situation present in and covered by our dissent to Award 3022—Docket SG-2979.

In other respects we adhere to and affirm our dissent to Award 3022—Docket SG-2979.

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