

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of R. W. Williams, Signal Maintainer, Chicago Terminal Crew, with headquarters at Tower A-5, Pacific Junction, Illinois, (1) for time and one-half for service performed outside of regular working period May 23, 1942, and (2) for overtime rates for shift change May 25 and 29, 1942.

EMPLOYES' STATEMENT OF FACTS: November 16, 1939, Bulletin No. 143-39 was issued to advertise permanent position of signal maintainer in maintenance crew with headquarters at Tower A-5, Pacific Junction, Illinois. This bulletin indicated that the assigned hours for the positions were from 7:00 A. M. to noon and from 1:00 P. M. to 4:00 P. M. The assigned territory was the Chicago Terminal District and the regular days off for the position were shown as Sundays and holidays. The bulletin advertises that a brief description of the duties of the position was electrical and mechanical repair and construction work pertaining to the various DC block signal systems and the electric, electro-pneumatic, mechanical, remote control and drawbridge interlocking plants together with spring switch layouts, crossing signals and bells.

December 8, 1939, a bulletin, also numbered 143-39, was issued announcing that Mr. R. W. Williams had been assigned to the position of signal maintainer in the Chicago Terminal Maintenance Crew as advertised in Bulletin No. 143-39. This announcement reported that Phil Tocke, W. M. Coe, W. L. Stewart and G. H. Mooney had also applied for this position.

Mr. Williams worked fifteen hours on Saturday, May 23, 1942, for which he was paid for fifteen hours at straight time rate. He worked from 3:00 P. M. until 11:00 P. M., Sunday, May 24, for which he was paid at rate of time and one-half. Mr. Williams then worked May 25, 26, 27 and 28 from 3:00 P. M. to 11:00 P. M. for which he was paid at the straight time rate.

The controlling agreement between the parties became effective November 1, 1938.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the carrier violated the provisions of Rule 13 when it refused to compensate Mr. Williams at rate and one-half for service performed outside his regularly established working period and it violated Rule 27 when it refused to compensate him at overtime rates for the first shift each time shift was changed. The carrier did, for its own benefit and convenience, arbitrarily remove Mr. Williams from a position he had secured by virtue of his senior-

had the employe entitled to a vacation not been granted such vacation.

4. An employe performing vacation relief takes the rate of pay and conditions of employment of the vacationing employe.
5. The working rules are to be applied in a fair and reasonable manner to avoid unnecessary expense to the carrier; neither side should be permitted to gain financial advantages because of granting vacations; the vacation agreement and the working agreement must be construed jointly in a broad sense and not on any strict or literal interpretation of either the vacation agreement or the rules of the working agreement.

In light of the foregoing the claim of Mr. Williams should be denied.

OPINION OF THE BOARD: The Brotherhood claims that Signal Maintainer R. W. Williams, assigned to Tower A-5, Pacific Junction, Illinois, should have been paid time and one-half for service performed outside of his regular working period on May 23, 1942, and for overtime, because of change of shift, on May 25 and 29, 1942.

The record establishes that the Claimant, at the time this claim arose, was a signal maintainer of the Chicago Terminal Crew and assigned to Tower A-5, Pacific Junction, Illinois, with hours from 7:30 A. M. to 4:00 P. M., one-half hour for lunch, and Sundays off.

The second trick signal maintainer at Tower A-2, whose assignment was from 3:00 P. M. to 11:00 P. M. with Fridays off, was on vacation from May 23 to 28, 1942, inclusive, and, as it was a position necessary to the continuous operation of the Carrier and no qualified extra signal maintainer being available, claimant was assigned to his position.

As a consequence thereof, claimant worked the following hours from May 23 to 29, 1942, inclusive, and for all of which he was paid on a straight time basis: Saturday, May 23, 1942, 7:30 A. M. to 12:00 Noon, 12:30 P. M. to 4:00 P. M. on his own assignment and from 4:00 P. M. to 11:00 P. M. on the shift of the second trick signal maintainer in Tower A-2, or a total of fifteen hours. On Sunday, May 24, 1942; on Monday, May 25, 1942; on Tuesday, May 26, 1942; on Wednesday, May 27, 1942; and on Thursday, May 28, 1942, he worked on each day from 3:00 P. M. to 11:00 P. M. on the second trick in Tower A-2. On Friday, May 29, 1942, he worked from 7:30 A. M. to 12:00 Noon and from 12:30 P. M. to 4:00 P. M. in Tower A-5.

As to the claim that Williams should have been paid for seven hours on an overtime basis on May 23, 1942, Rule 13 of the parties' Agreement provides:

"The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows: Overtime hours, either prior to or following and continuous with the regular working period, shall be computed on the actual minute basis and paid for at the rate of time and one-half."

Under this rule claimant should have been paid for seven of the hours worked on May 23, 1942, that is, from 4 P. M. to 11 P. M., on an overtime basis. See Award 3301.

As to the claim that Williams should have been paid on an overtime basis for the eight hours worked on May 25 and 29, 1942, because of a change of shift, Rule 27 of the parties' Agreement provides:

"Employees changed from one shift to another will be paid the overtime rates for the first shift of each change. Employees working two (2) shifts or more on a new shift shall be considered transferred. This will not apply when shifts are temporarily changed at the request of the employees involved."

As to the claim for Monday, May 25, 1942, on this basis it must be denied for claimant's first change of shift was either on Saturday, May 23, 1942, or Sunday, May 24, 1942. Which, we do not here need to decide, for in either event it was not on Monday, May 25, 1942, and it would not carry forward to the second day of such change.

As to the claim for Friday, May 29, 1942, we find it is within the provisions of Rule 27 and should have been paid on an overtime basis. See Awards 3022 and 3733.

However, it is the Carrier's position that the Vacation Agreement of December 17, 1941, and not the working Agreement, controls the decision in this case and it particularly refers to the Referees' interpretation thereof, which the parties thereto agreed should be final and binding.

It should be stated that this claim was jointly submitted to the Committee established by Article 14 of the Vacation Agreement and was considered by that Committee but the members thereof were unable to agree as to its disposition. Article 14 provides as follows: "This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy." The dispute is here for our consideration and disposition.

Although the Board has passed on this question and held contrary to the Carrier's contention in the following Awards 2340, 2484, 2537, 2720, 3022 and 3733, we have again examined the Vacation Agreement, Interpretations dated July 20, 1942, and the Referee's Award of November 12, 1942, involving the interpretation and application thereof. While there may be single statements of the Referee which it might be said are contrary thereto, we think the following, as stated in Award 2340, correctly determines its status in relation to all rules agreements: "It seems clear, therefore, that all rules agreements remain as before the execution of the Vacation Agreement, and that, in the absence of a negotiated change, they are to be enforced according to their terms." For a more complete discussion of the question, see Award 3022. Therein the same referee as announced the original holding, after a more detailed discussion, affirms the holding in his original Award. Many more statements from the Referee's Interpretation to the same effect as quoted in Award 3022 could be quoted but to no useful purpose. We find that holding to be correct.

The record fails to disclose that any changes have been negotiated with reference to the application of the rules of the parties' Agreement effective November 1, 1938, in relation to the Vacation Agreement. The dispute is therefore controlled by the rules of the parties' Agreement effective November 1, 1938. Thereunder claim is sustained as to May 23 and 29, 1942, but denied as to May 25, 1942.

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 Employee involved in this dispute are respectively carrier and employee 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 Carrier violated the Agreement.

AWARD

Claim sustained as to May 23 and 29, 1942, but denied as to May 25, 1942.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1948.

DISSENT TO AWARD 3795—DOCKET SG-3810

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