Award No. 3796

Docket No. SG-3809

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, for time and one-half for service performed Sunday, May 24, 1942.

EMPLOYE'S STATEMENT OF FACTS: This claim supplements claims previously submitted covering request for adjustment in compensation for May 23, 25, and 29, 1942. The carrier had, prior to filing the claim for the above dates, paid Mr. Williams at rate of time and one-half for services performed Sunday May 24, 1942. The carrier subsequently deducted one-half rate for services performed on this date.

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 from 3:00 P. M. until 11:00 P. M. Sunday, May 24, for which he was paid eight hours at 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 12 when it failed to compensate Mr. Williams at rate and one-half for service performed Sunday May 24, 1942. The carrier did, for its own benefit and convenience, arbitrarily remove Mr. Williams from a position he had secured by virtue of his seniority and declined to compensate him in accordance with the provisions of the agreement.

There have been no implementing or supplementing agreements between the parties to this dispute tending to nullify Rule 12, and while the carrier may

ployе were not granted a vacation and was paid in lieu therefor under the provisions hereof * * *"

together with Referee Morse's decision upon questions raised under Article 12 in which he stated in part:

"It is the opinion of the referee that the following points set forth fair, reasonable and equitablt rulings as to what the parties must be deemed to have intended and meant by Article 12 (a):

"(1) That in administering the vacation agreement and in interpreting and applying its various provisions, the parties would be guided by a ruling principle that existing working rules should not be applied in a manner which would result in unnecessary expense to the carriers."

there is no reasonable basis for the application of Rule 12. To pay Mr. Williams the time and one-half rate for services performed on Sunday, May 24, 1942, would have the effect of requiring the carrier to assume greater expense because of granting the second trick signal maintainer at Tower A-2 a vacation than would have been incurred if this employee had not been granted a vacation and been paid in lieu of the vacation not granted.

In conclusion, the carrier holds that it has clearly shown that:

1. The purpose of the vacation agreement is to grant vacations and the carrier must exert every effort to do so.
2. A regularly assigned employee may be required to perform vacation relief work.
3. An employee performing vacation relief takes the rate of pay and conditions of employment of the vacationing employee.
4. When a vacation is granted the carrier should not be required to assume additional expense over and above what would be involved had the employee entitled to a vacation not been granted such vacation.
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 BOARD: This claim arises out of the same factual situation as in Docket SG-3810 but relates to the work performed by claimant on Sunday, May 24, 1942. For this work he asks to be paid on an overtime basis.

The facts are sufficiently set forth in our Opinion in Award 3795, and will not be repeated here.

Rule 12 of the parties' agreement, effective as of November 1, 1938, insofar as it relates to the question here involved is as follows:

"Work performed on Sunday * * * shall be paid at the rate of time and one-half, * * *"

Under the facts of this case, the claimant is entitled to be paid on an overtime basis for the work he performed on Sunday, May 24, 1942, by reason of the foregoing rule. See Awards 2537, 3022 and 3733.

Carrier's contention with reference to the applicability of the Vacation Agreement has been fully disposed of by our Opinion in Award 3795 and will not be repeated here. We find the claim should be sustained.

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 Carrier has violated the agreement.

AWARD

Claim sustained.

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 3796—DOCKET SG-3809

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