

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that Mr. S. D. Carter, signal maintainer, Roanoke, Virginia, be compensated at the overtime rate in accordance with Rules 311, 313 and 701 for all time held on duty by direction of the management from regular quitting time on the day preceding a Sunday or holiday to regular starting time on the next regular work day following such Sunday or holiday for each week end or holiday required to be on duty on alternate week ends or holidays he should be off duty in accordance with paragraphs (b) and (c) of Rule 314, less any amounts actually paid by the carrier from January 1, 1946 and so long as Mr. Carter is held for duty on alternate week ends or holidays.

EMPLOYEES' STATEMENT OF FACTS: Mr. Carter, claimant in this case, was, during January, 1946, and subsequent thereto regularly assigned as signal maintainer, Roanoke, Virginia.

Signal maintainers on a monthly salary, except Mr. Carter, were during the period of time involved, assigned to work from 8:00 A. M., to 4:00 P. M., with alternate Saturday afternoons and Sundays or holidays off duty in accordance with Rule 314. Mr. Carter was assigned to work 8:00 A. M., to 4:00 P. M., Monday through Saturday each week with stand-by service on all Sundays and holidays. No work is performed by maintenance employees on Sundays and holidays except in cases of emergency when being held subject to call under Rule 314.

Carter is a "Present Incumbent" of position of monthly maintainer at Roanoke, Virginia, in accordance with provisions of Rule 701 and Appendix "A" of the Signalmen's Schedule of December 1, 1945. His position was not shown with any relief Sundays or holidays on the "Schedule For On and Off Sundays and Holidays For The Year 1946," and in accordance with this schedule, Carter was required to perform service every week end. He was compensated on the basis of allowance of eight hours every day, including Sundays and holidays, plus any additional time worked on any day outside the hours of his assignment, any overtime thereby being computed and paid for in accordance with Rule 701 (b) of the Schedule.

POSITION OF EMPLOYEES: The Brotherhood contends that the carrier violated the provisions of the existing agreement covering Signal Department employees on The Virginian Railway in refusing to permit Mr. S. D. Carter freedom after 12:00 noon on days preceding a release Sunday or holiday in consideration for having rendered subject to call service in accordance with Rule 314 on a previous Sunday or holiday.

The claim first presented on October 30, 1946, and first stated in detail on February 5, 1947, is not supported by any schedule rule and is contrary to the interpretation placed on the schedule immediately following its effective date by the Vice President of the Brotherhood who negotiated the agreement. The claim was, of course, denied by the Carrier. It would appear most reasonable that a contract interpretation made promptly after completion of the contract negotiations would more certainly express the intent of the parties to the contract than would a contrary interpretation made at a considerably later period, particularly when both parties to the contract agree as to the first interpretation.

There is some doubt as to just what instructions Maintainer Carter received from his supervisor regarding his assignment. The supervisor then in charge is not now employed by the Carrier and it is not possible to determine from him what instructions he issued. He did not show Carter's assignment with any relief Sundays or holidays on the "Schedule For On And Off Sundays Or Holidays For The Year 1946". Furthermore he passed Carter's time claims for eight hours' allowance each Sunday and holiday on the basis that would have been allowed had Carter not been scheduled off duty on alternate Sundays and holidays. Thus, while there may have been some local misunderstanding of the policy to be followed in scheduling "on and off" Sundays and holidays, there was no misunderstanding either on the part of Carter, the local officers, or the representatives of the employees as to proper payment and such payment has already been made. The claim in the present case for additional compensation came later when the representatives of the employees apparently changed their interpretation of the agreement.

By reference to Carrier's Exhibit "C" it is seen that the claim for January 5, 6, and 7, 1946, for example, is for 28 hours at time and one-half and 16 hours at double time. The only place in the schedule where double time is mentioned is in Rule 311, which has been shown above as not applicable to monthly rated Maintainer Carter. This is another indication of the apparent confusion in the minds of the employees regarding the principles involved in this case.

It should be emphasized that Maintainer Carter is one of the limited group of "present incumbents" who, under the schedule, are paid a monthly rate as they had been prior to the effective date of the schedule. All signalmen or maintainers hired or promoted to such positions after the effective date of the schedule (December 1, 1945) are paid not on a monthly rate, but on an hourly rate. In return for continuation of the monthly rate the specific monthly rated employees gave up any claim for overtime payment except for "service performed in excess of these stated number of hours in any calendar month". (Rule 701 (b)). Furthermore, it was agreed as to the number of hours of "service performed" which would be allowed on a Sunday for being "held subject to call", namely eight hours.

In summary the Carrier wishes to emphasize:

1. There is no rule of the Schedule which requires payment of the claim made for Maintainer Carter for additional compensation.
2. The claim is specifically contrary to Rules 311, 313, and 701 of the schedule.
3. No time tickets have ever been presented covering this claim, nor until October 30, 1946, was any claim made, and not until February 5, 1947, was the claim specifically set forth, although the claim alleges violation as of January 5, 1946.
4. Maintainer Carter has been paid in accordance with the schedule as agreed upon and as interpreted, in writing, by the representatives of the employees, as well as by the Carrier.

Exhibits Not Reproduced.

OPINION OF BOARD: Claimant S. D. Carter was the regularly assigned signal maintainer at Roanoke, Virginia. Signal maintainers are com-

pensated on a monthly basis. They are assigned to work 8 hours per day, Monday through Saturday, with standby service on all Sundays and holidays. No work is assigned or performed on Sundays and holidays except in cases of emergency when being held subject to call. The present dispute arises out of the interpretation to be given to portions of Rule 314, current Agreement. Applicable portions of this Agreement are:

“(a) Employees assigned to or filling vacancies on regular maintenance assignments and paid on a monthly basis will be subject to call on account of the requirements of the service, and will notify the designated employee where they may be found and will respond promptly when called.

(b) For the purpose of relieving such employees from being held subject to call on alternate Sundays and holidays, the Signal Supervisor will prepare a schedule on an annual basis which will show the Sundays and holidays each such Maintainer will consider himself as subject to call.

(c) In consideration of and as long as employees are held subject to call on alternate Sundays and holidays without additional compensation, they will be released at 12 Noon on the day preceding their release Sunday or holiday without loss of compensation. It is understood that employees scheduled as subject to call under the provisions of this rule will, when called, not be confined to work on their own section.”

The record shows that Carter was never given alternate Sundays and holidays off as provided by Rule 314 (b), except a few granted upon application that are not here involved. The only question is what compensation or penalty, if any, is to be applied.

A monthly rated employee is compensated on the basis of 8 hours per day, Monday through Saturday, and is credited with 8 hours for each Sunday or holiday when subject to call, plus additional time credited on the minute basis for any work performed (a) outside assigned hours on week days, (b) outside assigned hours on Sundays and holidays when subject to call, and (c) work performed at any time on Sundays and holidays when not subject to call. A signal maintainer is paid overtime on all hours worked in excess of 231 hours per month.

When the rule was placed in effect allowing employees subject to call to be off on alternate Sundays and holidays, no provision was made as to the compensation to be paid in the event they were held subject to call on days they were entitled to be off. The Organization contends that Rules 311 and 313 apply. Rule 311 deals with hourly rated employees and consequently is inapplicable to Carter, a monthly rated employee, except as provided by Rule 701 (c). Rule 313 does not apply for the reason that Carter falls within the expressed exception contained in the rule.

A signal maintainer is assigned and paid for 8 hours' service each day for 6 days per week. This includes standby service for the remainder of each 24 hour period. When subject to call on relief Sundays and holidays, he was credited with 8 hours' time, the equivalent of an assigned day's work and the standby service incidental to it. This is all to which he is entitled under the Agreement in view of the overtime provisions of the contract. See Rule 701 (d). The penalty, if any, arises out of the application of the overtime rate to hours each month in excess of 231 as provided in Rule 701 (b). This interpretation is not only the correct one as we view it, but it was also agreed to by the Vice-President of the Organization on January 18, 1946. In a letter to the Carrier on that date, he said: "If, however, he is being held for calls every week-end I assume that he is being given credit for the proper number of hours per month or as an example, during the month of January he would get pay for 17 hours' overtime without having to answer a call at all. This is no claim but rather a statement for clarification". The Carrier adopted this interpretation and applied it in compensating Carter. There is no merit to a claim for compensation additional thereto.

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

There was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1948.