

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the General Committee, Brotherhood of Railroad Signalmen of America, Great Northern Railway Company, that monthly salaried Leading Signal Maintainers, Signal Maintainers, Signal Maintainers' Helpers and Signal Foremen, who have rendered compensated service on not less than 160 days during the preceding calendar year, are entitled to an annual vacation of six consecutive working days with pay and that Sundays and holidays are not to be counted as working days.

(b) Claim that George Knutson, monthly salaried Signal Maintainer, East Stanwood, Washington, be allowed one day's pay account afforded but five working days' vacation during calendar year 1943.

EMPLOYEES' STATEMENT OF FACTS: Leading Signal Maintainers, Signal Maintainers, and Signal Maintainers' Helpers employed by this Carrier are paid a monthly salary based upon 243-1/3 hours at pro rata rate per month. The monthly rates cover, without additional compensation, any emergency service which may be required before or after the usual hours of the working day and emergency service on Sundays and holidays. Emergency service by agreement rules is defined as that service required to restore the signal system to safe and proper working order.

Except for emergency service, these employees are not required to work on Sundays and holidays. They are regularly assigned to work six days per week excepting weeks in which holidays occur. If service is performed for the Carrier on work other than that required to restore the signal system to safe and proper working order, these monthly salaried employees, by agreement, are paid overtime in addition to their monthly salaries at rate of time and one-half their base rate of pay.

Mr. George Knutson is a monthly salaried Signal Maintainer and rendered compensated service in excess of one hundred and sixty days during the calendar year 1942 and was eligible for an annual vacation of six consecutive work days with pay during the calendar year 1943. He is not required to perform service on Sundays or holidays except for emergency signal service. Emergency signal service is defined by provision of the agreement between the parties as service required to restore the signal system to safe and proper working order.

Mr. Knutson began his vacation on Tuesday, August 3, 1943, and was required to return to service Monday, August 9. His vacation thus was afforded on the following consecutive days, August 3, 4, 5, 6, 7, and 8, 1943, a total of five week days and one Sunday.

The Carrier has clearly shown that the intent of the parties to the Vacation Agreement of December 17, 1941 was that days for which a full 8 hours' compensation is allowed whether for working or merely standing by, shall be counted as work days both for the purpose of determining eligibility and for determining the length of the vacation period, and claims (a) and (b), covered in this submission, should be denied.

OPINION OF BOARD: Signal Maintainer George Knutson was entitled to an annual vacation of six consecutive work days with pay during the year 1943. He commenced his vacation on Tuesday, August 3, 1943, and was required to report for service on Monday, August 9, 1943. The sixth day of his vacation period was therefore a Sunday. The Organization contends that Sunday is not a work day within the meaning of the Vacation Agreement.

Signal Maintainers are paid a monthly salary based upon 243-1/3 hours at pro rata rate per month. This monthly rate includes any emergency service which may be required before or after the usual hours of the working day and on Sundays and holidays. Rule 49(b), current Agreement, defines emergency service as follows: "Emergency signal service, as referred to herein, is the service required of a monthly rated employe to restore to safe and proper working order that section of the signal system for which he is responsible." Any service performed on Sundays other than emergency service thus defined, is paid for at the overtime rate. While Sundays and holidays are used in computing the monthly salary rates, monthly salaried employes are not assigned to perform service on Sundays and holidays. The issue here is whether Sunday is a work day within the meaning of Article 1 of the Vacation Agreement. It provides:

"Effective with the calendar year 1942, an annual vacation of six (6) consecutive work days with pay will be granted to each employe covered by this Agreement who renders compensated service in not less than one hundred sixty (160) days during the preceding calendar year."

It cannot be questioned that in calculating the 160 days of compensating service required by Rule 1, Vacation Agreement, to entitle an employe to an annual vacation of six consecutive work days, Sundays and holidays are properly included. This is because stand-by service for which compensation is made, is compensated service within the meaning of the Vacation Agreement. Question No. 2, Referee's Decision (a), Vacation Agreement of December 17, 1941, pages 33, 34. But the 160 days of compensated service fixed as a condition precedent to obtaining an annual vacation and the six consecutive work days allowed were not set up with a common denominator. There must have been some reason for using the words "consecutive work days" instead, for instance, of six "consecutive days on which compensated service" is performed.

It must be borne in mind that the Vacation Agreement was not patterned to fit into the Signalmen's Agreement with this Carrier. It was a general agreement to be applied where many varied forms of collective agreements existed. In short, the Vacation Agreement had no particular meaning applicable only to the Signalmen's Agreement now before us. What then did the contracting parties intend when the words "six consecutive work days" were used?

We think they meant an assigned day on which work was to be performed. It is true under the present agreement that signal maintainers were paid for stand-by service on Sundays and holidays, but such days were not assigned work days. We think it was intended that an employee working a six-day position with Sunday off should have a vacation period of Monday through Saturday. We think it was intended that the holder of a seven-day position should have six days' vacation immediately following a relief day. This accounts, we think, for the provision in Rule 11 of the Vacation Agreement, that the vacation period must be continuous except by mutual agreement. It thereby enables employes to tack on Sundays off and rest days to their vacation time. Whether Sundays could be so used under the Agreement before us is not necessary to a decision here. We merely point out that such

considerations played their part when the words, "six consecutive work days" were used. We conclude that the Vacation Agreement means six consecutive days on which the regularly assigned work of the position is to be performed. It appearing that Sunday is not an assigned day to perform the ordinary work of the position of signal maintainer, Signal Maintainer Knutson was deprived of one day of his vacation period on which he was required to work his regular assignment. This warrants an affirmative award.

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 Agreement was violated as charged.

AWARD

Claim sustained.

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.