Award No. 4238
Docket No. SG-4148

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the Brotherhood of Railroad Signalmen of America, Chicago, Milwaukee, St. Paul and Pacific General Committee, that monthly salaried signal department employes 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 work days with pay and such employes who rendered compensated service on not less than 160 days during the preceding calendar year who have five or more years of continuous service in the signal department are entitled to an annual vacation of twelve consecutive work days with pay and that Sundays and holidays are not to be counted as work days.

(b) That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company erred when on January 29, 1947, it issued instructions to its Supervisors of Telegraph and Signals, Signal Inspectors, and Signal Foremen that, under the Vacation Agreement, Sundays and holidays are considered work days for monthly rated Signal Foremen and Traveling Maintainers.

(c) Claim that the Carrier shall now compensate all monthly salaried signal department employes covered by the current agreement for all and any work days not granted as vacation days.

EMPLOYES' STATEMENT OF FACTS: During the calendar year 1947, this Carrier deprived all monthly salaried signal department employes covered by the working agreement of from one to three work days vacation.

On January 29, 1947, the Carrier issued the following letter:

"Vacation Agreement File H-480

Milwaukee, Wisconsin
January 29, 1947

SUPERVISORS TELEGRAPH & SIGNALS
SIGNAL INSPECTORS
SIGNAL FOREMEN

It has developed that since the Vacation Agreement was broadened two years ago, to the extent that employes who had performed 160 days or more of actual railroad service during each of the five (5) previous years would be granted twelve (12) instead of six (6) days vacation, that the rule has not in some cases been

is ready and willing to dispose of the question on that basis; however, there is no reasonable basis for the Employes' contention that holidays should not be counted as work days.

In view of the foregoing, the Carrier respectfully requests that the claim of the Employes be denied.

OPINION OF BOARD: This dispute arose by reason of a letter issued by the Carrier on January 29, 1947 to the effect that thereafter in the computing of vacation days, Sundays and holidays were to be considered as work days in cases of monthly rated signal foremen and traveling maintainers.

The Signalmen's Organization and the Carrier's present Agreement became effective on April 16, 1946. The parties are also under the National Vacation Agreement of December 17, 1941, as supplemented February 23, 1945 and interpretations thereto.

The Organization in presenting this claim relies on two recent awards of the Board, Awards 3996 and 4003, contending that a like fact situation prevails in this case.

The Carrier contends that Rule 68 provides that signal foremen are to be paid on a monthly basis and outlines the method by which wage or salary compensation is to be computed. Likewise, they contend that Rule 69 provides the method of computation of compensation for signal maintainers on a monthly basis. Rule 68 further provides that signal foremen are paid at a pro rata rate each day in the month, including Sundays and holidays.

Article 1 of the Vacation Agreement is cited on behalf of the Carrier and interpretation by Referee Morse defining the meaning and intent of the words "consecutive work days". And it is contended that in the computation of the monthly rate it is clearly shown that signal foremen are paid for a "full day's work" for Sundays and holidays. Also, on behalf of the Carrier is cited Article 12 (a) of the Vacation Agreement reading in part:

> "* * * 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 therefor under the provision hereof."

Illustrations are given with reference to additional cost to Carrier if the claim were sustained in this case. An offer of compromise was made by the Carrier in the dispute with reference to traveling maintainers which was rejected by Petitioners.

The Referee, sitting with the Board in this case, has carefully considered the factual situation herein presented in comparison with that which existed in Awards 3996 and 4003. There seems to be no clear line of distinction which would take this set of facts out of the rule there laid down.

In view of this conclusion on the part of the Referee, the claim must be sustained. While employes are paid on a monthly basis, yet the practice prevailing according to the record herein presented does not bear out the contention of Carrier. The two situations outlined differ to some extent; however, the general principle is construed to be the same.

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 claim is sustained in accordance with Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1948.