

Award No. 4711
Docket No. SG-4425

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: (a) That on May 30, 1947, a legal holiday under the rules of the current Signalmen's Agreement, that contrary to Rule 16, an employe other than the regular assignee was called, notified, or assigned outside of his regular tour of duty to perform work of that of the regular assignee, and that the regular assignee was deprived of the eight (8) hours at the Maintainer's time and one-half rate of pay for that date.

(b) That I (R. D. Cannon) am, and was, the regular assignee on the territory on which said work was performed, and was not called or used on said date, that I am entitled as the regular assignee to the aforesaid claim.

EMPLOYEES' STATEMENT OF FACTS: On Decoration Day, May 30, 1947, which is a legal holiday, and one of the seven recognized holidays under the provisions of the Signalmen's Agreement, the Carrier used Mr. A. R. Rakoske, a signalman junior to the claimant, Mr. R. D. Cannon, Signal Maintainer, for eight hours to perform signal work on the territory maintained by Cannon.

Cannon's maintenance territory to which he is regularly assigned is on the Southern Division of this Carrier with headquarters at Yukon, Florida.

Both employes involved in this dispute are regularly assigned to work eight hours per day, six days per week, except when a holiday occurs in a week, the work week is reduced to five days. Any work performed outside of regular assignments is overtime work and compensated for at the rate of time and one-half.

The claimant is a Maintainer subject to call outside of regular working hours and had not registered absent on this date and was at his home station awaiting calls.

The seniority of the two employes in the Signalman-Signal Maintainer class is:

R. D. Cannon 5-27-20

A. R. Rakoske 4-14-47

This Brotherhood has made attempts, by correspondence, to have the Carrier agree to a joint submission covering this dispute, without success. We are reproducing herewith letters forwarded to the Carrier in connection with our efforts to get this Carrier to jointly submit this dispute to the National Railroad Adjustment Board.

OPINION OF BOARD: The facts are simple and clear. In the process of welding worn rail ends, signal bonds were destroyed or so disturbed that Carrier's signal system frequently was rendered inoperative and train service delayed. The regular signal maintainer was unable to keep up with the welding gang and carry on his customary maintenance throughout his territory.

A new position, therefore, was created and bulletined: "Signalman (Permanent), Home Station: Camp cars in charge of rail welding gang, Southern Division." The Claimant, whose seniority dates from May 27, 1920, did not bid for the position. The successful bidder subsequently bid on and was awarded another position, after which the position was re-bulletined and awarded to A. R. Rakoske, seniority date April 14, 1947.

Decoration Day or Memorial Day is observed as a legal holiday on April 26 on part of the Carrier's system, and on May 30 on another part of the system. The Signalman observed May 30 as a legal holiday; the welding gang, to which Signalman Rakoske was attached, observed April 26 as their legal holiday under their Maintenance of Way Agreement. May 30, therefore, was a regular work-day for the welding gang but a holiday for signalmen, including Claimant Cannon, signal maintainer for the territory, and Rakoske, regularly assigned to work with the welding gang. To keep the bonding abreast of the welding as the gang proceeded, Rakoske was required to work on his holiday. He was paid at time and one-half rate.

Claimant, relying on Rule 16, contends he, rather than Rakoske, should have been permitted to perform this overtime work. The pertinent part of Rule 16 states: "Employees who are subject to call and desire to leave their home station will notify the Signal Supervisor. Unless registered absent, regular assignee will be called."

The claim here is based on the contention that "other than the regular assignee was called—outside of his regular tour of duty to perform work of that of the regular assignee." The implication is that Claimant Cannon was the regular assignee to work with the welding gang. The facts do not bear out this contention. By all the rights assured by the Agreement, Rakoske, who bid the position in when it was bulletined, was the regular assignee; the position ceased to belong to Cannon when it was assigned to Rakoske. Cannon was the regular assignee for general maintenance.

We are aware of the value that employees very properly place upon seniority and the obligation that rests upon carriers to respect such rights. We have read with care all of the awards cited by and in behalf of Claimant bearing on this important question. The facts here are different than those dealt with in those awards. The two men involved here were not working in a gang together as was the case in Awards Nos. 495, 2341, 2426, 2716, 2717, and 2994, nor was there a question of territorial invasion as in Award No. 3292, nor a return to duty after leave as in Award No. 2639.

In the instant case, each occupied a separate position which he worked independently of the other day after day as the work went along. Each was the regular assignee on his own position. We cannot, therefore, in good conscience, on the facts of record, sustain a claim that Cannon was the regular assignee to work with the welding gang on May 30, 1947, an operation that was carried on independently of his regular maintenance function after the new position for that purpose was created.

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

That the Agreement was not violated.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. J. Tummons
Acting Secretary

Dated at Chicago, Illinois, this 13th day of February, 1950.