

Award No. 5333
Docket No. SG-5281

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM:

- (a) The Signal Maintainer working on the maintenance territory at St. Paul, Minn., be paid eight hours at rate and one-half for each day another employe was used to perform the work of his maintenance district on Saturdays since the effective date of the shorter work week. (September 1, 1949)
- (b) The Assistant Signal Maintainer working on the maintenance territory at St. Paul, Minn., be paid eight hours at his own straight-rate for Mondays and the difference between Signal Maintainer's straight-rate and rate and one-half for eight hours on Saturdays since the effective date of the shorter work week. (September 1, 1949)

JOINT STATEMENT OF FACTS: Incident to the establishment of the 40 hour week effective September 1, 1949, the following instructions were issued by F. W. Bleier, Supervisor, Communication and Signals:

ALL SIGNAL MAINTAINERS
ALL ASST. SIGNAL MAINTAINERS
(HOURLY RATED)

"St. Paul, Minn., Aug. 22, 1949

Commencing September 1, 1949, the establishment of the 40-hour week of five 8-hour days will be placed in effect with no change in the present regularly established working hours.

All hourly rated Maintainers and Assistants will work Monday through Friday with Saturday and Sunday off, except the Assistant Maintainer with headquarters at St. Paul, who will work Tuesday through Saturday, with Sunday and Monday off and be paid the Maintainer's rate of \$1.726 per hour for the Saturday time.

The rates shown on the attached sheet will be in effect.

Yours truly,

(s) F. W. Bleier
Supr. Comm. & Sigs."

It is the intent of this rule that men will receive their training on this railroad and will be promoted to signalmen and signal maintainers rather than employing new men from other railroads for such positions."

The Board will notice that this rule provides that a Maintainer will be allowed an Assistant. The proper application of this rule requires that a Maintainer will have an Assistant working with him at all times, not two-thirds of the time as the Carrier has done in this instance, inasmuch as the Carrier contends that the signal maintenance on the St. Paul territory requires six-day coverage. In this instance there was no assistant working on Monday nor was there an assistant working with the maintainer on Saturday.

The Brotherhood also holds that the Carrier has not in fact proved that the maintenance territory at St. Paul, Minn., requires six-day coverage because the Maintainers' and Assistants' positions have been blanked on specified holidays since the establishment of the shorter work week.

It is the Brotherhood's position that when the Carrier desires the advantage of the Rule 4½(c) permitting six-days' coverage of work each week, it must keep the six-day positions filled at all time (excepting the seventh day of the work week) including holidays as specified and provided for in Rule 9 as revised effective September 1, 1949.

"Holiday Service:

Work performed on the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, providing when any one of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation, shall be considered the holiday, shall be paid for at rate and one-half. This rule does not apply to employees compensated on a monthly basis per Rule 14."

The Board is respectfully requested to sustain the claims.

POSITION OF CARRIER: It is the position of the carrier that signal maintenance work is a six day per week requirement and therefore there is in evidence a necessity for filling position of signal maintainer six days per week as outlined in rule 4½(c) of agreement between the Chicago, Saint Paul, Minneapolis and Omaha Railway Company and the Brotherhood of Railroad Signalmen of America dated July 20, 1950 and effective September 1, 1950, reading:

"4½(c). Six-day Positions—

Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday."

It is immaterial to the carrier whether the incumbent of the maintainer's position is assigned Mondays through Fridays or Tuesdays through Saturdays. Assignments were made as shown above so as to give the senior employee the benefit of Saturday and Sunday as rest days.

It is further the position of the carrier that rule 25 as referred to by the employees is not here involved and there is in evidence no violation thereof.

It is also the position of the carrier that the rules referred to by the employees have not been violated and this Board cannot consistently do otherwise than deny the claim.

OPINION OF BOARD: This claim arises because of a change in the daily assignment of a Signal Maintainer and an Assistant Signal Maintainer on Carriers' St. Paul Maintenance District. Effective Sept. 1, 1949 with

the establishment of the 40-hour week, Carrier assigned the Maintainer on this district for five days, Monday through Friday, and the Assistant was assigned Tuesday through Friday in that capacity and on Saturday as a Maintainer for which latter date he was paid at the Maintainer's rate of pay.

Under the Agreement effective December 1, 1940 between the Employees and Carrier, which Agreement is still effective except as modified by Memorandum of Agreement effective September 1, 1949, there is but one Seniority District on the System and seniority is based on relative length of service in the seniority class in which employed. Signal Maintainers and Assistant Signal Maintainers are not in the same seniority class. Rule 4½(e) of the Memorandum Agreement effective September 1, 1949 providing for relief assignments reads as follows:

"(e) Regular Relief Assignments—

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under provisions of this agreement.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving." (Underscoring supplied.)

Clearly, under the provisions of the above quoted rule the parties contemplated that employees assigned to relief positions would be of the same seniority class as the employees they relieve. Here, the relieving employee (Assistant Signal Maintainer) held no seniority in the higher class. It was, therefore, improper to assign him on a continuing basis, as here, to relieve the Signal Maintainer on the latter's rest day.

Rule 4½(1) of the Agreement effective September 1, 1949, reads as follows:

"(1) Work on Unassigned Days—

Where work is required to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

It does not appear from the record that there was an available extra or unassigned employee of the maintainer's class who would otherwise not have had 40 hours of work during the weeks involved in this claim. Accordingly, the regularly assigned Signal Maintainer on the district was entitled to the work on the sixth day. The claim of the Signal Maintainer is, therefore, valid. However, under the principles established by Award 4244 and Awards therein cited and subsequent awards the applicable penalty is the pro rata and not the punitive rate.

With respect to the claim of the Assistant Signal Maintainer it is clear that this position as it now exists was the continuation of a position which was regularly assigned to work six days per week prior to the institution of the 40-hour week. It was clearly the intention of the Carrier to reduce the assigned working days of its signal maintainers and assistant maintainers from a previously existing six-day assignment to five by the notice of Aug. 22, 1949 appearing in the Joint Statement of Facts and not to change the Assistant Signal Maintainer headquartered at St. Paul to a four-day assignment. We conclude that the record clearly indicates that the Assistant Signalman's position was at least a five day position. The Carrier,

in requiring the Assistant Signal Maintainer to relieve on the Signal Maintainer's rest day, improperly denied the Assistant the right to work a day of what would have been his regular assignment as Assistant Signalman. It follows that he is entitled to one day's pay at the Assistant's rate for the weeks when he was assigned as an Assistant Tuesday through Friday and as a Maintainer on Saturday. To require the payment of time and one-half at the Maintainer's rate for the work performed on Saturday would be imposing a double penalty, something which this Board in previous awards has frowned upon. Accordingly, that part of the claim will be denied.

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 Carrier violated the Agreement.

AWARD

Claim (a) sustained at pro rata rate and (b) sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of April, 1951.