

Award No. 5782
Docket No. SG-5739

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: That the carrier violated the agreement when it assigned, arranged or otherwise permitted other than the regularly assigned maintainers to perform work on their respective sections on Saturday, January 21, 1950, and

That Messrs. T. H. Clatworthy, B. O. McMellon, Lester Thompson and C. C. Chapman be paid a minimum call allowance of two hours and forty minutes at the time and one-half rate for not being called to perform work on their respective sections on January 21, 1950.

EMPLOYEES' STATEMENT OF FACTS: Messrs. T. H. Clatworthy, territorial limits Mile Post 428 to Mile Post 439, B. O. McMellon, Mile Post 454 to Mile Post 464, Lester Thompson, Mile Post 464 to Mile Post 474 and C. C. Chapman, Mile Post 474 to Mile Post 493, are regularly assigned as signal maintainers on the carrier's Huntington Division. These employees are regularly assigned to work 8:00 A.M. to 4:30 P.M., with 30 minutes for meal period, Monday to Friday, inclusive, with Saturday and Sunday on which there is no work assignment on their respective sections, as regularly assigned rest days each week.

On Saturday, January 21, 1950, Sperry Fissure Detector equipment was operated over the territory to which each of these signal maintainers are assigned. It having been found that the Sperry testing apparatus does not in all cases hold track relays in a de-energized position, resulting in improper signal indications, the carrier has had signal employees accompany the testing equipment and take action to insure that signal equipment properly functions in all cases during the time the testing equipment is being used in a particular track section.

On January 21, 1950, the work of accompanying the Sperry Car was performed by three regularly assigned road mechanics and an hourly rated assistant maintainer, neither of whom are assigned to the individual territories of the above named claimants but who cover the entire division performing work of a different character of that performed by signal maintainers. The four employees (Three road mechanics and an hourly rated assistant maintainer) had done the testing work on Friday, January 20, while the regularly assigned maintainers were performing other work on their respective territories. The monthly rated road mechanics used in this work were paid for eight hours and forty minutes at the time and one-half rate in addition to their regular monthly rate for the performance of such work on January 21, 1950.

(d) While standby service is not needed at the present time on the Russell and Chicago Divisions, it is understood that the provisions of paragraph (a) apply to the maintainer positions (not including traveling mechanic), and when service requirements show a need for standby service all the provisions of this Rule 25 will apply.

(e) This rule does not apply to monthly rated traveling mechanics covered by Rule 54."

That rule provided a plan of alternation. Each week end half of the maintainers stood by and half were free. The half standing by were used to protect their own territories and those of the other half who were free. In framing new Rule 25 this arrangement was changed, so that all maintainers were to be free; but if needed, the man on whose territory the trouble occurs is to be called first and given preference. If he cannot be located, the carrier is then free to call another employee.

Certainly the revision of Rule 25 did not contemplate any such construction as the employees now urge. To sustain their position would not only disrupt the orderly working of other rules of the agreement but would in many instances impose unwarranted conditions on the carrier. The following illustrations serve to show how this could operate:

1. Suppose a signal gang of 10 men were engaged in some major construction or repair work. On Friday it is determined that some phase of the work must be carried on on Saturday, requiring the services of 4 men. Under the employees interpretation of the rules only 3 men could be used off the construction gang and the maintainer on whose territory the work was being progressed would have to be called, take over the gang employees' tools and materials, and perform the work. If the work involved more than one maintainer territory, an even more absurd situation would arise.
2. A monthly rated mechanic may be assigned to test relays over a division or a part of the division. The work becomes delayed, and in order to catch up on it, arrangements are made to work on Saturday. The maintainer on whose territory the relay testing is to be done, could, according to the theory of this claim, demand the work. Therefore, the regular relay man would have to turn his equipment, etc., over to the maintainer for the testing on Saturday.

To summarize—Rule 17 (g) has no application to the principle involved in this case, because it was designed to apply to work which would on regular assigned work days belong to a particular position.

In other words, it was intended to give additional work to unassigned employees who had not made 40 hours in that week and also relieve the regular men of working overtime when such unassigned employees were available. It did not confer on maintainers any additional rights to Saturday work which was being performed on weekdays by another group of employees.

The employees themselves, by not contesting the rights of the employees used to perform the work on weekdays admit that the work is not work belonging to maintainers. Yet, they would have the Board believe that on Saturday the work suddenly becomes maintainer work and should be taken away from other employees under the same agreement and given to maintainers.

The claim is utterly without merit and should be denied.

OPINION OF BOARD: This claim is advanced by Brotherhood of Railroad Signalmen, hereinafter called Petitioner, for and on behalf of certain employees referred to by name in Statement of Claim, hereinafter called Claimants, complaining of Chesapeake and Ohio Railway, hereinafter called Carrier.

Claimants are classified as signal maintainers and as such hold regular assignments. The record reflects where they protect their work and it also describes at least a portion of their duties which is what we are interested in and is sufficient for our purposes. The act complained of on the part of Carrier occurred on one of Claimant's regular assigned rest days. Petitioner avers such act to be repugnant to Schedule Rules 17 (g) and 25 and prays for relief as set out in Statement of Claim.

Carrier contends in effect Claimants do not have the exclusive right to protect the work in question during the work week as evidenced by the fact employes not within Claimants' classification performed such work during the week without complaint by Petitioner or Claimants and therefore they cannot now be heard to complain in this case.

We are not impressed by Carrier's theory of the case. Assuming the facts to be as alleged by Carrier the Claimants were not damaged during the work week by Carrier's act and hence Petitioner would have no basis upon which to file or progress a claim on their behalf. But the same situation does not prevail on rest days. We think the general rule may be stated as holding that if a work assignment is to have any meaning whatever it must mean the holder has the right to protect the work thereof. This is not to say there are no exceptions to the rule but it is to say if such existed the honorable carrier member of the Board who so ably represented Carrier could not urge same in that he was not furnished with evidence showing or tending to show the same. Furthermore, this is not to say Petitioner could have successfully urged a claim on behalf of those other than Claimants and falling within the classification here involved in that such is not before us and this opinion is not to be so construed.

There is no question Claimants did not work on the day in question or that the work is a part of their assignment. That portion of Schedule Rule 17 (g) reading "in all other cases by the regular employes" is mandatory.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Schedule as alleged and that the individuals named in the Statement of Claim be paid a minimum call allowance at a pro rata rate.

AWARD

The claim is sustained to the extent indicated in the above and foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.

DISSENT TO AWARD 5782, DOCKET SG-5739

The error in this award stems from the failure of the Referee to differentiate between special assignments and special work, and regular assignments and maintenance work.

Claimants are regularly assigned signal maintainers and are thus classified under Rule 4. They are assigned within certain territorial limits, designated by mile posts. Their assigned duties comprise the maintenance and repair of the signal system, etc., as set forth in the Scope rule.

The three signal mechanics and one assistant signal maintainer taken from a signal gang were regularly assigned to special work, i.e., accompanying the Sperry Detector Rail Car (and its technical staff engaged in checking of the rails for concealed defects) over the entire seniority district, which seniority district takes in several seniority sections (Rule 34). There is no charge that these Signal Department employes performed any maintenance or repair work while traveling over the claimants' assigned territory. See Award 4711.

Notwithstanding the statement of the Referee to the contrary, had he properly construed the agreement and the facts of record, he would have found that the Carrier did advance sufficient and detailed information to justify a denial of this dispute.

For the above reasons, we dissent.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ W. H. Castle

/s/ A. H. Jones

/s/ J. E. Kemp