Award No. 5804
Docket No. SG-5537

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: A claim in behalf of Mr. E. L. Campbell, Signal Maintainer, and V. E. Smith, Signal Helper, Sanford, N. C., pay for a minimum call of two hours, forty minutes at the overtime rate on September 19, 1949 when the adjoining maintainer was used to perform signal work on Mr. Campbell's territory on his assigned rest day.

JOINT STATEMENT OF FACTS: Messrs. E. L. Campbell and V. E. Smith are regularly assigned as maintainer and signal helper, respectively, with headquarters at Sanford, N. C., territorial limits from Mile Post 186.9 to Mile Post 211.8 on the Virginia Division.

Regularly assigned working hours for these employes are 7:45 A. M. to 4:45 P. M., one hour for lunch, Tuesday to Saturday, inclusive, with Sunday and Monday on which there is no work assignment, as these are their regularly assigned rest days each week.

On Monday, September 19, 1949, Messrs. H. J. Edge and J. R. Lockamy, regularly assigned signal maintainer and helper, respectively, with headquarters at Aberdeen, N. C., territorial limits from Mile Post 211.8 to Mile Post 238.4, were called and used to perform signal work, i.e., that of clearing signal trouble on the CTC carrier at the South end of Sanford, which is on the territory regularly assigned to Messrs. Campbell and Smith, without attempting to call Messrs. Campbell and Smith.

There is an agreement in effect between the parties effective December 16, 1942 and Memorandum Agreement of June 30, 1949, supplement thereto, which are by reference made a part of this dispute.

POSITION OF EMPLOYES: It is the position of the Brotherhood that Messrs. E. L. Campbell and V. E. Smith, who were on the date of this claim regularly assigned to a specific maintenance territory from Mile Post 186.9 to Mile Post 211.8, which they secured by virtue of their seniority under applicable rules of the current working agreement, were entitled to all the signal work of that territory, both regular and extra, except as specifically excepted in Rule 11, paragraph (h), of the agreement and that the carrier violated the Signalmen's agreement when it required or permitted Messrs. H. J. Edge and J. R. Lockamy, employes regularly assigned to the maintenance section between Mile Post 211.8 and Mile Post 238.4, to perform signal work on the maintenance section regularly assigned to Messrs. Campbell and Smith on an assigned day off of the regularly assigned employes.

OPINION OF BOARD: Claimants are a signal maintainer and a signal helper regularly assigned Tuesday through Saturday for signal maintenance from Mile Post 186.9 to Mile Post 211.8. H. J. Edge and J. R. Lockamy were regularly assigned as signal maintainer and signal helper; Monday through Friday, for maintenance work from Mile Post 211.8 to Mile Post 238.4. The hourly assignments for each assigned day were identical. It will be noted that the territorial assignments were adjoining.

On Monday, September 19, 1949, signal trouble arose on the territory assigned to claimant which required the use of the standby C.T.C. carrier. Signals were operating but one of the two C.T.C. carriers was out of order. The necessity for keeping both C.T.C. carriers in operating condition is self-evident. It was emergent work which could not be delayed without the assumption of unnecessary risk.

The Carrier used Edge and Lockamy to perform the work during their assigned working hours, they being regularly assigned to work the adjoining territory on that day. The day in question was a rest day of these Claimants. It is the contention of the Organization that the work belonged to Claimants under the Agreement and that they were deprived of a call.

The Organization contends that the claim is controlled by Rule 11(h), Agreement dated June 30, 1949, which provides:

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

The Carrier asserts that a signal maintainer or helper assigned to a particularly defined territory may properly be used on an adjoining territorial assignment in case of an emergency. It is contended that the seniority of signal employes is carrier wide and that they may properly be used anywhere on the railroad in case of necessity. It is also asserted that this has been the practice in the past and that the practice should be adhered to by this Board.

The record discloses that the signal maintainers and signal helpers here involved were assigned to territories definitely described by mile post limits. No definite assignment to work the rest days of other signal maintainers and signal helpers appears to have been made. We cannot agree with the Carrier, therefore, that the rest day work between Mile Post 186.9 and Mile Post 211.8 was assigned to Edge and Lockamy within the meaning of Rule 11 (h). We do not here decide what the effect of such an assignment would be. It is not before us. We think that Carrier was obligated to call Claimants to do the work in question, if they were available, after it was determined that there was no unassigned employe available who had not worked 40 hours in that week.

Carrier contends that a signal failure on one assigned territory might cause a signal failure on another assigned territory and that this affords a basis for using signal employes on other territories. This is no more true true than in case of a shutdown of train operations because of a train wreck or a washed out bridge. The railroad as a whole may be seriously affected. While rules otherwise inapplicable are thereby brought into play, the plain provisions of the Agreement remain in force. Rule 11 (h) is plain and unambiguous in this respect and we are required to give effect to it.

Carrier contends that its position is supported by a long continued practice. Rule 11 (h) appears to have come into existence as a part of the 40-Hour Agreement effective September 1, 1949. The violation is alleged to have occurred on September 19, 1949. Any practice existing prior to September 1, 1949, which is inconsistent with Rule 11 (h) must be deemed abrogated by that rule. Clearly no practice could arise between September

1, 1949, and September 19, 1949, that would control the result in this dispute.

One other point merits discussion. Carrier contends that the term "regular employe" mentioned in Rule 11 (h) refers to employes working regularly on adjacent assigned territory. The Organization asserts that it refers to the employes regularly assigned to the territory where the work arose. We must concede at the outset that Edge and Lockamy were assigned to five-day positions, Monday through Friday, and that the term "position," since the advent of the 40-hour week, refers to the service required and not to the work week of an individual employe. The positions were therefore assigned as five-day positions with two rest days each week. No relief employes were required on a five-day position and none were assigned. Consequently, Sunday and Monday were unassigned days on the territory where Edge and Lockamy were used. There was no "regular employe" assigned to work on Monday but there were regular employes assigned to the five-day positions on this territory. We think the term "regular employe" used in Rule 11 (h) was intended to refer to the regular employe who was assigned to work the five-day position on the territory in which the work arose. It is not disputed that Claimants were available to perform the work. They were therefore entitled to it. If they were not available within the meaning of that term, Carrier could properly call another to perform the work.

Carrier relies heavily upon Award 4894 of the Third Division. The Decision in that case rests upon a rule that is no longer in effect. We find no fault with that award, but since its reasoning is based upon a rule that does not now exist, it has no force as a precedent in the instant case. An affirmative award is in order.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 26th day of May, 1952.