Award No. 6107
Docket No. SG-5910

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago and Eastern Railroad that:

A. Hill, a monthly rated T. & T. Maintainer with Sunday as assigned rest day, shall be paid a minimum call for services rendered to the Carrier, Sunday, April 9, 1950.

EMPLOYES' STATEMENT OF FACTS: Mr. A. Hill is a regularly assigned T. & T. Maintainer with headquarters at Danville, Illinois. Mr. Hill is paid a monthly basis under Rule 70 of the current agreement, and under provisions of that rule Sunday has been established as his rest day. This rule provides that rules applicable to other employes of the same craft or class shall apply to service on such assigned rest day. Rule 22 provides for a minimum of two (2) hours and forty (40) minutes at time and one-half rate for employes released from duty and notified or called to perform work outside of and not continuous with regular working hours.

Sunday, April 9, 1950, was Mr. Hill's assigned "rest day", and any service performed by him between 12:01 A. M. and 12:00 midnight on April 9, 1950, must be paid for under Rule 22.

Because of a sleet storm between Watseka and Grant Park on Sunday, April 9, 1950, Maintainer Hill was called at 3:40 P. M., regarding amount of cable at Oaklawn which might be needed to repair and restore the pole line to proper working order. Mr. Hill satisfied this call immediately from memory and thus avoided the necessity and consequent delay a trip to Oaklawn for personal survey and check-up would have entailed. The Carrier demanded and received the information and would have insisted upon securing that information even though a trip from Danville to Oaklawn might have been necessary and several hours consumed in the enterprise.

This dispute has been progressed in the usual manner on the property, without adjustment.

There is an agreement between the parties to the dispute bearing effective date of May 1, 1945, with certain revisions conforming with the March 19, 1949 Chicago Agreement establishing a shorter work week, which by reference is made a part of the record in this dispute.

ployes so called will begin at the time called and end at the time they return to designated points or home station****".

It is the Carrier's position that claimant was not "called or notified" to perform work, nor did he perform any work at 3:45 P. M. on date in question, or at any other time prior to commencing work on his regular assignment the following morning. There is no provision in the current agreement obligating Carrier for any payment in a situation of this character. The specific intent of the Call Rule, on which claim is based, has in the past been interpreted to mean that no penalty shall be incurred under such rule unless an employe is in fact "called" to perform work. The word "called" does not apply to the situation covered by this claim, i.e., a simple telephone conversation between employe and his superior officer.

Carrier submits that inasmuch as claimant was contacted by telephone merely for the purpose of answering a simple question, which information was at his immediate command, and since no work was performed and as there is no applicable rule in the current agreement providing for payment of compensation under such circumstances, there is no merit to the claim and it should be denied.

It is affirmatively stated that all data herein has been handled with representatives of the employes.

OPINION OF BOARD: The Claimant, A. Hill, is a regularly assigned T. and T. maintainer with headquarters at Danville, Illinois. It appears from the record that due to a severe sleet storm between Watseka and Grant Park Sunday April 9, 1950, the Claimant's assigned rest day, H. L. Duncan, Communications Engineer, contacted Claimant at about 3:45 P. M. by telephone and made inquiry about the quantity of electrical cable stored at Carrier's repair point and general supply base at Oaklawn, it being anticipated that such cable would be needed in making repairs to Carrier's communication lines between Watseka and Grant Park which had been damaged by virtue of the storm.

Claim was made that T. and T. Maintainer, A. Hill, a monthly-rated employe with Sunday as an assigned rest day, be paid a minimum call Sunday April 9, 1950.

In a letter written to H. L. Duncan dated May 9, 1950, by Claimant, he expressed his reason for the claim as follows: "Regarding the last part of your letter where you are refusing to allow this claim by stating I did not perform work. The call I received was not a personal call, but a call regarding work to be done due to glaze storm between Watseka and Grant Park. Since the call was regarding the work, why was it not work? The call was to ask about the amount of cable on hand at Oaklawn. Had I gone to Oaklawn and obtained this information you would not have questioned the time involved, but since I remembered the amount on hand I gave it by memory. Is a man to be refused any overtime due to the fact that he utilizes his faculties and can remember something regarding his work? If this be the case, one just as well cease trying to remember anything regarding his work and set up a system to be kept at his headquarters where he will be forced to go on such calls so as to be sure of collecting the time that is justly due him."

The Rules involved in this dispute are Rules 70 and 22 of the Agreement between the Parties effective date May 1, 1945, amended September 1, 1949 to conform to shorter work week agreement.

Rule 70 provides in part as follows: "An employe assigned to the maintenance of a section who does not return to home station daily, and employes regularly assigned to perform road work, may be paid on a monthly basis. Such employe shall be paid applicable monthly rate which shall constitute compensation for all services rendered except as set forth herein. No overtime is allowed for time worked in excess of eight (8) hours per day; on the other hand, no time is to be deducted unless the employe lays off of his own accord."

The pertinent part of Rule 70, amended September 1, 1949, is as follows: "Such employes shall be assigned one regular rest day per week, Sunday, if possible. Rules applicable to other employes of the same craft or class shall apply to service on such assigned rest day. For the purpose of this rule, the rest day will begin at 12:01 A. M., and end at 12:00 midnight of the calendar day assigned as a rest day, and overtime compensation will not be allowed except for service within the period designated."

The Employes take the position that Claimant was entitled to a complete, undisturbed rest day, and any service rendered the Carrier on that day must be paid for as required by Rule 22. Rule 22 is a call rule. It provides as follows: "Employes released from duty and notified or called to perform work outside of and not continuous with regular working hours, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate; if held longer than two (2) hours and forty (40) minutes, they will be paid at the time and one-half rate computed on actual minute basis. The time of employes so notified will begin at the time required to report and end when released. The time of employes so called will begin at the time called and end at the time they return to designated point at home station. An employe so called less than two (2) hours and forty (40) minutes before his regular starting time, will be paid time and one-half until his regular starting time, and thereafter at straight time for the regular hours worked."

The Employes contend that Claimant performed "service" for the Carrier as provided for in Rule 70, on his rest day. Rule 22 becomes applicable for the minimum pay of two (2) hours and forty (40) minutes at time and one-half rate.

The Carrier's position may be stated in substance as follows: There is no rule of the Agreement which provides compensation to an employe contacted on the telephone to answer a mere inquiry as to quantity of cable stored at Carrier's shop at Oaklawn.

It appears that Rule 22 was adopted February 1, 1920, and has been carried forward in subsequent Agreements between the parties in substantially the same language as now appears. Analyzing Rule 22, it provides, when employes are notified or called to perform work, the time of the employe so called will begin at the time called and end at the time they return to designated points or home station.

Claimant was not called or notified to perform work, nor did he do so at 3:45 P. M., on the day in question. We believe Rule 22 is clear and explicit by its terms. It means the Carrier is obligated to pay an employe the minimum of two (2) hours and forty (40) minutes at the rate of time and one-half on the condition the employe has been released from duty and notified or called (to do what?) to perform work outside of and not continuous with regular working hours. There was no notification here, nor was the Claimant called to do work outside of and not continuous with regular working hours. Answering a telephone to give information such as was done here does not come within the Rules of the Agreement as they are presently written. Surely Rule 22 has no application to Rule 70 in this respect, it must be conceded. Rule 22 deals with **call—notification to perform work** under the conditions set forth therein. It is obvious the parties, when the rules in question were negotiated, never contemplated a situation as is presented in this case. For a case somewhat analogous see Award 5916.

This Board must determine the rights under this contract from the four corners of the Agreement. Unless language expressly or impliedly authorizing payment as claimed here can be found in the Agreement itself, this Board can not read into it such a meaning.

In Award 2491, this Board said: "* * * We can only interpret the contract as it is and treat that as reserved to the Carrier which is not granted to the employes by the Agreement." See Awards 4304, 2622, 5307. Any change to be

made in a contract to meet a condition as here presented is a matter for negotiation between the parties. We can neither legislate nor can we write into the Agreement that which is not there.

We conclude, from an analysis of the record and the Rules heretofore set out, the claim should 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 Employe involved in this dispute are respectively Carrier and Employe 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 should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1953.