

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
READING COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Reading Company that:

(a) The Carrier violated the Signalmen's Agreement when it used Signal Foreman Frank R. Tomlinson to perform ordinary construction work on Saturday, September 30, 1950, without additional compensation.

(b) Signal Foreman Tomlinson be paid \$27.90 for the services he rendered for the Carrier, as described in (a).

EMPLOYES' STATEMENT OF FACTS: The claimant, Signal Foreman Frank R. Tomlinson, is a regularly assigned Foreman with a normal work week of five (5) eight-hour days, Monday through Friday. On Saturdays, he is not normally required to perform work except when called for other than ordinary construction work. Sunday is his assigned rest day.

On Saturday, September 30, 1950, the claimant was used ten hours in completing and placing in service an automatic crossing gate installation at Lansdale, Pa. The work in connection with this installation performed on this Saturday was identical to the normal work performed by the claimant on Monday through Fridays; therefore, it was ordinary construction work and in no respect could it be considered of an emergency nature.

The old manually operated gates which were replaced by this new automatic installation were in operating condition and could have been retained in service until the following normal work week of the claimant.

The Carrier's objective in replacing the manually controlled gates was to abolish two positions of gate attendants by the end of the month, (September 30, 1950).

It was not in keeping with past practice to perform this type of work on Sundays prior to the establishment of the shorter work week on September 1, 1949.

This claim was originally presented to Signal Supervisor O. S. Penman under date of October 18, 1950, and he denied the claim. It was then progressed in the usual manner on the property, without securing a satisfactory adjustment in favor of the claimant.

There is an agreement in effect between the parties to this dispute bearing an effective date of January 1, 1941, which was revised on July 19, 1949,

was ordinary or unusual construction or maintenance work, it was understood that Foremen would, on and after September 1, 1949, be subject to calls and service on Saturdays without additional compensation in the same manner and under the conditions that such employes had performed work on Sundays prior to September 1, 1949. In the instant case the assignment of Foreman Tomlinson to work on Saturday, September 30, 1950, was in accordance and in compliance with and not in violation of rules in effect. The work assigned to Foreman Tomlinson on the date in question was performed under the same conditions as work that had been performed by Foremen on Sundays prior to the establishment of the 40-hour week as of September 1, 1949.

The provisions of Rules 2 and 3 of Article V of the Signalmen's Agreement do not contemplate or require the payment of additional compensation to Foremen or Assistant Foremen for work performed on the sixth day of the work week. While the signal gangs are not called upon to perform work on Saturdays, the sixth day of the work week frequently, they are required to do so when necessary. However, the Foremen and Assistant Foremen assigned thereto have not been allowed any additional compensation for work on such days, in support of which the Carrier submits that the records disclose that a Signal Foreman and an Assistant Foreman were assigned to work on the installation of electrically controlled crossing gates at East Falls on the Philadelphia Division on Saturday, September 30, 1950, the same date on which the new improved crossing facilities involved in this dispute were placed in service at Lansdale. Also, a Foreman was assigned to work on Saturday, March 31, 1951, at Ashland on Carrier's Shamokin Division. However, the Foremen and Assistant Foremen in these instances were not allowed any additional compensation and no protest was received or claim made for additional payment.

Review and check of the daily time reports turned in for Foreman Tomlinson for the nine months period January to September, inclusive, 1950, reveals that of the 39 Saturdays in this period Foreman Tomlinson was paid for eight hours on each of the 39 Saturdays but actually performed work on only two Saturdays, namely, August 5 and September 30, 1950.

Under the facts and circumstances set forth in the foregoing, it is the Carrier's position that the assignment of Foreman Tomlinson to work on Saturday, September 30, 1950, the sixth day of his work week, was proper, in accordance with, and not in violation of the provisions of the effective Signalmen's Agreement. Further, that the rules do not require any payment in addition to the monthly rate for services performed on such days. Therefore, the claim as submitted is without merit and unjustified and Carrier respectfully requests that same be denied in its entirety.

The issue involved in this dispute has been discussed in conference and handled by correspondence with representatives of the Signalmen's Brotherhood.

OPINION OF BOARD: In revising their rules to conform to the Forty Hour Week Agreement the parties provided that monthly rated employes would be assigned one regular rest day per week for which they would receive additional pay if worked. They also agreed as follows, Art. V, Rule 2:

"Conditions now applicable to such employes on the bulletined or assigned rest day shall hereafter apply to the sixth day of the work week."

On this record it cannot be said that the work performed on Saturday, September 30, 1950, by the claimant constitutes any violation of that rule. It appears to have been similar in character to and performed under the conditions similar to those under which work was performed by signal foremen on Sundays without additional pay prior to September 1, 1949. Hence the claim is without merit.

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 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 19th day of January, 1954.