Award No. 6567

Docket No. SG-6433

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) A shortage claim of $119.06 in pay for the last half of December 1948. Mr. Neubauer was called to the Pittsburgh Division at 8:00 A. M., December 20, 1948, and returned to headquarters at 4:00 P. M. December 23, 1948, due to an emergency call at Cresson, Pa.

(b) A shortage claim of $133.10 in pay for the last half of December 1948. Mr. R. W. Boyd, Signalman, at Monongahela, Pa., was called to the Pittsburgh Division December 20, 1948, at 8:00 A. M. and returned to Monongahela at his headquarters December 23, 1948, at 6:25 P. M., due to an emergency call at Cresson, Pa.

EMPLOYES' STATEMENT OF FACTS: Mr. Neubauer, Signalman, is regularly assigned with headquarters at Homestead, Pa., with assigned tour of duty of 8:00 A. M.-12:00 Noon, 12:30 P. M.-4:30 P. M.

Mr. R. W. Boyd, Signalman, is regularly assigned with headquarters at Monongahela, Pa., with assigned tour of duty of 8:00 A. M.-12:00 Noon, 12:30 P. M.-4:30 P. M.

As a result of a storm on the Pittsburgh Division on or about December 16, 1948, telegraph and signal systems were disrupted and the Monongahela Division was asked for, and furnished men to help with the repairs.

Claimants left the Monongahela Division on December 20, 1948, worked on that Division on December 20, 21, and 22, and returned to the Pittsburgh Division on December 23, 1948. Claimants were paid travel time from Monongahela Division to Cresson, Pa., and from Cresson, Pa., to Monongahela Division, and were provided meals and lodging while on the Pittsburgh Division.

This claim has been handled in the usual manner on the property and was progressed up to and including the highest officer of the Carrier designated by the management to whom appeals may be made, without reaching a satisfactory settlement.

a meal period of one hour, headquarters—Johnson Avenue Yard, Jamaica."

The decision of the System Board of Adjustment in the above claim, identified as Decision No. 205, issued August 15, 1935, reads as follows:

"Time consumed by Signalmen Schultz and Spencer from 5:35 P. M. to 6:00 P. M., April 29, 1935, in returning tools to Johnson Avenue Yard is work time."

A copy of The Pennsylvania Railroad—Long Island Rail Road Telegraph and Signal System Board of Adjustment Decision No. 205 is attached hereto and made a part hereof as Exhibit "D."

The Carrier submits that aside from the underpayment of one hour at the straight time rate to Claimant Neubauer for the service he performed between 7:00 A. M. and 8:00 A. M., December 20, 1948, and the overpayment to Claimant Boyd of $.58 and on December 20, 1948, of the difference between 1 hour at the straight time rate and 2 hours and 40 minutes at the time and one-half rate, the Claimants have been properly compensated in accordance with Section 8 (d) of the Schedule Agreement, and as a consequence thereof, the claim of the Employes is without foundation and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning Rates of Pay, Rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims involve the applicable rate of pay for hourly rated employes while working, waiting and traveling during four days on temporary emergency service outside of their assigned territory or home district.

The essential position of the Brotherhood is two-fold: first, that the assignment of Claimants to work outside of their assigned territory or home district was in violation of the Agreement; and second, that since they were called one hour before their regularly assigned starting time, Article 2 Section 9 requires their compensation at the rate of time and one half on a continuous time basis from the time they reported at their home headquarters until they returned to their home headquarters.

The essential position of the Carrier is that the assignment to work in a foreign district was authorized by the Agreement and that Article 2, Section 8 (d) governs.

In two particulars the Carrier admits that Claimants were not properly compensated in accordance with its own theories of the proper application of Section 8 (d), but no issue is joined either in the submissions or in argument on this question by reason of the Brotherhood's contention that Section 8 (d) has no application whatsoever. In this posture of the record, we pass the question whether the Carrier properly applied Section 8 (d) to the various specific aspects of these claims; and the claims must therefore stand or fall on the two-fold position taken by the Brotherhood.

First. It is true that Claimants were regularly assigned to bulletined positions with specified headquarters and specified territory. Such being the case, even though the Agreement is system-wide, they could not properly be regularly assigned to work in a foreign district or territory.

But Article 2, Sections 4 and 8(d), expressly contemplate that an hourly rated employe may be assigned to service which does not permit of his daily return to his headquarters. Moreover, Section 2 Article 15 further expressly contemplates that an employe may be "taken from his assigned territory to work elsewhere in an emergency." And finally, by providing that "Except for temporary emergency service, an employe shall not be transferred to another seniority district unless he so desires," Article 4 Section 17 by necessary implication authorizes temporary emergency work in a foreign district.

No contention is made that the service performed here was other than of a temporary emergency nature; and indeed the claims themselves refer to the service as being "due to an emergency."

The conclusion accordingly is that the Agreement authorized the performance of this service in a foreign territory or district.

Second. A familiar guide to interpretation requires that a contract should be construed to give effect to all of its provisions, if possible. For this reason both Sections 8 and 9 should read together in such a way as not to deny all effect to any provision of either, if possible. Such a reading of these two sections together discloses several differing bases of pay for various kinds of service depending upon the specific circumstances in which the particular service is performed.

If there be any apparent conflict among any of these provisions, another familiar guide to interpretation requires the specific to control the general provision leaving the latter to operate in the general field not covered by the specific provisions.

Section 8 (a), Section 8 (b) and Section 9 are general rules which operate in the general field not covered by specific provisions. Thus, Section 8 (a) covers the general field of pay for working, waiting and traveling within the assigned tour of duty. Section 8 (b) covers the general field of service performed outside of and continuous with the assigned tour of duty. And Section 9, a call rule, covers the general field of service performed outside of and not continuous with the regularly assigned working hours.

On the other hand, Section 8 (d) covers the specific field of traveling and waiting time when the service assigned does not permit the employe to leave and return to his headquarters the same day; and this is the specific situation which is the subject of these claims.

There is no conflict between Section 8 (a) and Section 9, because the former deals only with pay during the assigned tour of duty or regularly assigned hours, whereas the latter deals only with pay during the hours outside of and not continuous with the regularly assigned hours. And there is no conflict between Section 8 (d) and Section 9 unless it appears that some service was performed on a non-continuous basis outside of the regularly assigned working hours in which event, by reason of the proviso in Section 8 (d), Section 9 would govern; but there is no such showing here.

Whatever interpretation may be placed upon Section 9 standing alone, it is not the controlling rule here. Sections 8 (a) and 8 (d) therefore cover.

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

That the Agreement was not violated by the failure to apply Section 9 as contended for by Claimants.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1954.