Award No. 7207
Docket No. SG-7099

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad that Signal Maintainers Ollie Larkin, R. F. Harris, N. F. Harper and E. L. Pardue be paid proper punitive rates of pay for services rendered to the Carrier on September 2 and 3, 1951, less any amounts already paid. (Carrier's file G-357-9)

EMPLOYES' STATEMENT OF FACTS: The claimants were regularly assigned hourly-rated Signal Maintainers with headquarters at Lebanon Junction, Lebanon, Junction City, and Mount Vernon, Kentucky, respectively, located on the Lebanon Branch, at the time this claim originated.

Normally, the claimants are not scheduled for stand-by service on Sundays and holidays. Accordingly, unless otherwise instructed, they are free from service on Sundays and holidays.

The claimants were notified by Assistant Signal Supervisor Pierce to hold themselves in readiness for calls on Sunday and Labor Day, September 2 and 3, 1951, to protect movement of troop trains over the Lebanon Branch. The movement of these troop trains continued into September 4, 1951. The last troop train was called to leave Corbin, Ky., at 9:40 A. M.

As evidenced by Brotherhood's Exhibits "A", "B" and "C", this dispute was handled in the usual manner on the property, without securing a satisfactory settlement.

There is an agreement between the parties to this dispute bearing an effective date of February 16, 1949, which has been revised to October 1, 1950. This agreement is, by reference, made a part of the record in this case.

POSITION OF EMPLOYES: The position of the Brotherhood in this dispute is that the Carrier exacted a specific service of claimants Larkin, Harris, Harper, and Pardue, outside of their regular and normal tour of duty, a fact which is confirmed by the Carrier's commitment made in its letter of December 15, 1951. (Brotherhood's Exhibit "B") wherein it is stated:

> "Your understanding that Assistant Supervisor Pierce instructed these employes to hold themselves in readiness for calls on September 2 and 3, 1951, is correct."

The agreement with the petitioning organization was in no way violated by the Carrier. Should the Board, however, decide otherwise, there could be no justification for payment of punitive rate. The claimants did not request to be off call when they were asked to be available nor did they make objection at that time. Under Rule 18(a) they are obligated to protect the service unless registered off call.

All factual data submitted in support of the Carrier's position has been presented to duly authorized representative of the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants are hourly-rated signal maintainers who are regularly assigned Monday through Friday, with Saturdays and Sundays as rest days. They are not regularly scheduled for stand-by service, but under Rule 18 (a) they are required to notify the management where they may be called, and must register off call if not to be available at any time. When not registered off call they are subject to call for service to be performed beyond their regular assignments, at the proper punitive rates for additional service.

On Sunday, September 2, and Monday, September 3, (Labor Day) 1951, the Carrier expected a heavy movement of troop trains on its Lebanon Branch, where Claimants were assigned. Some fifteen such special trains were to be moved at 45 minute intervals over the holiday week-end. None of the Claimants had registered off call; but as a precautionary measure, on Friday, August 31, 1951, the Assistant Supervisor told Claimants of the scheduled troop movements and asked that they be available if needed. All four Claimants were paid pro rata rate for the two days and Claimant Harris, the one who was required to perform seven hours' work, was paid at time and one-half for this service. We are asked to sustain claims for the penalty rate for all four Claimants for the standby time.

First it is necessary to consider the Carrier's contention that this case was not timely submitted to the Board as contemplated by the Railway Labor Act and the parties' Agreement. A comparable situation was presented to us by these parties in Docket No. SG-7025 and decided in Award No. 6921, on March 21, 1955. The same Agreement was involved. The facts regarding the amount of time between the Organization's written notice of objection to the decision of the Director of Personnel, as required in Rule 54(d), and the date of appeal to the Board are essentially the same as in the previous case. Some twenty-seven months elapsed in that instance as in this. But we found that neither the Railway Labor Act nor the parties' Agreement placed a definite time limit on such appeals.

In short, Rule 54, **Time Limit for Handling Claims,** provides only that the Carrier be notified in writing within 90 days after the decision of the Director of Personnel, if his decision is not accepted. The record shows that the decision of the Director of Personnel was put in writing on December 13, 1951, and that the General Chairman, on January 16, 1952, wrote to advise the Carrier that the decision was not accepted. From that day forward the Carrier was on notice that this decision would be appealed. And that is the only requirement which the parties specified in Rule 54. We are here asked to add something to this Rule which the parties failed to prescribe.

This is not to say that the Board looks with favor upon undue delays. Where there is a showing of what amounts to laches, we have issued several denial awards. But since there has been no increase in the amount of Claimants' demands resulting from the delay, we see no reason to go contrary to our position in Award 6921 with respect to the issue of timely appeal. As we said in Award 7080, "Since the claim is for a closed period, it does not appear that the Carrier was prejudiced by such delay." Therefore, the claim will be considered on its merits.

The claims are presented under Rules 16 (a) and 17 (a), (b) and (c). Rule 18 (c) states that:

"Employes not designated by the schedule as held for standby service on any particular Sunday or holiday will be considered as free from service on such Sunday or holiday **but if called and they respond, they will be paid for service performed** in accordance with Rules 16 and 17." (Emphasis added.)

Rule 16(a) specifies that employes will be paid time and one-half rate for "service performed" on rest days and specified holidays. Rule 17(a) requires that time and one-half shall be paid for "overtime hours". Rule 17(b) provides that those who are "notified **or called to perform service** outside of regular working hours" shall be paid at time and one-half rate, with a minimum allowance of two hours. And Rule 17(c) provides for the payment of the double time rate after "16 hours of **actual service** in any 24-hour period. . . ." (Emphasis added.)

We cannot overlook the condition precedent to any claim for punitive rates under the provisions of Rule 18(c), and Rules 16 and 17. The language in 18(c) is plain and unambiguous—"if called and they respond, **they will be paid for service performed** in accordance with Rules 16 and 17." (Emphasis added.) In short, the punitive rates will be paid "for service performed". The use of such phrases as "called to perform service" outside of regular hours, and "16 hours of **actual service**" makes quite clear to us that the punitive rates are to apply for work actually performed, and not for standby time.

Of the four Claimants, only one was required to perform actual service. He was paid the punitive rate. Those who were not called to perform actual service on the holiday week-end were paid the pro rata rate for their idle time. We find no language in the Agreement which requires the Carrier to pay punitive rates for standby time where no actual service is required or performed.

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 13th day of January, 1956.