Award No. 7601
Docket No. SG-7566

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Gulf, Mobile and Ohio Railroad Company, that:

(a) That the Gulf, Mobile and Ohio Railroad company violated rules of the current Southern Region Signalman's Agreement when, commencing on June 14, 1954 and continuing to and including June 28, 1954, it required Signal Maintainer David J. Hoyle, who is the regularly assigned Signal Maintainer on the New Albany Maintenance territory, with headquarters at New Albany, Mississippi, to suspend work on his regular position to perform vacation relief work on the Jackson, Mississippi, Maintenance territory.

(b) That Signal Maintainer David J. Hoyle be paid additionally one day's pay for each of his regularly assigned days he was held off his regularly assigned position to perform vacation work.

(c) That Signal Maintainer David J. Hoyle be paid twenty-four (24) hours at the applicable punitive rates for services he rendered for the Gulf, Mobile and Ohio Railroad Company on each of his two rest days.

EMPLOYES' STATEMENT OF FACTS: During the period covered by this claim, Claimant owned, by virtue of his accumulated seniority, a permanent position of Signal Maintainer with headquarters at New Albany, Mississippi, his hours of service being eight hours per day, Monday through Friday. He was also subject to emergency work outside assigned hours Monday through Saturday. His assigned territory extended from Jackson, Tennessee, to Kittrel, Mississippi, and from Corinth, Mississippi, to Waynesboro, Mississippi, inclusive, his rest days beirg Saturday, except for emergency work, and Sunday. See Brotherhood's Exhibit No. 1.

Claimant was instructed to go to Jackson, Mississippi, June 14, 1954, to relieve the Jackson, Mississippi Maintainer while the latter was on vacation. Claimant complied with instructions and remained at Jackson, Mississippi through June 28, 1954.

be supported by this Board in the absence of a contractual provision requiring such payment, of which there is none.

The claim is not supported by agreement or practice and should be denied.

Carrier reserves the right to make an answer to any further submission of the Brotherhood.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as Signal Maintainer to the New Albany territory, with headquarters at New Albany, Mississippi. The Signal Maintainer assigned to the Jackson territory, with headquarters at Jackson, Mississippi went on vacation from June 14 to June 28, 1954. Claimant was assigned to and did report to Jackson to relieve on the signal maintainer position there while its incumbent was on vacation. He worked the regularly assigned hours of that position, which were the same as his own, performed no work on the two Saturdays and Sundays included in the temporary assignment, and received transportation and living expenses for the two week period—including the rental of a house occupied by him and his family. He was told at the time of his assignment to Jackson that he was to protect both the Jackson and New Albany territories for the two week period.

The claim is that Carrier violated the Agreement by requiring Claimant "to suspend work on his regular position to perform vacation relief work"; an additional day's pay for each regularly assigned day of the two week period plus two more days at punitive rate for the two Sundays involved are requested as compensation to Claimant for the violation.

Petitioner's position is that once having acquired his regularly assigned position through the exercise of his seniority under the seniority and bulletining rules of the Agreement, claimant was entitled to remain on it as long as it existed and his seniority was sufficient to hold it. No specific language of the rules is cited, but Petitioner contends that this case is similar in principle to the cases decided by this Board on the question of suspension of work to avoid overtime. In addition, Petitioner relies on Supplement No. 4, effective August 1, 1952, to the current Rules Agreement.

Carrier asserts that nothing in the Agreement prevents it from assigning one regularly assigned employe to relieve another who is on vacation, and that Supplement No. 4 is no longer applicable.

This case is not governed by the Awards on suspension of work to avoid overtime. In most of those cases, the basic problem is that an employe is suspended from working on his job and is assigned to another one, while another employe is assigned to work on the first employe's position—all for the purpose of avoiding the payment of overtime to the original or other employes. There is no overtime involved here, nor did any other employe do any work of Claimant's position to which he was entitled. Award 4646, cited by Petitioner, was based upon an absorption of overtime rule similar to the one in this Agreement and more particularly on the language of the bulletin rule in that case which limited temporary changes in assignments to situations involving train irregularities and volume of business handled. In this case, there is no such language in the bulletin rule and Petitioner does not cite or rely on Rule 5—Suspending Work To Absorb Overtime.

On the other hand, Rules 15—Filling Another Position, and 23—Return From Temporary Service, both clearly contemplate the temporary assignment of employes to fill positions other than their own. We find no rule of the Agreement which was violated by the assignment of Claimant to vacation relief on the Jackson position. It should be noted that in 1950 and 1951, vacation relief was provided for the Signal Maintainer at Jackson in the same manner as in this case without protest.

On July 16, 1952, the parties executed Supplement No. 4, effective August 1, 1952, which dealt specifically with the problem of providing vaca-

tion relief for monthly rated signal maintainers. The Supplement recited the desirability of establishing a position of Relief Signal Maintainer for that purpose, the practicability of combining the position of Assistant Signalman at Murphysboro with that of Relief Signal Maintainer, and established a permanent position of Relief Signal Maintainer to include vacation relief work and also assistant signalman work at Murphysboro. The Supplement then concluded with this sentence: "Nothing in this agreement shall be considered as requiring the continuance of this position when in the opinion of Management such position should be abolished."

On December 15, 1953, Carrier abolished the position of Relief Signal Maintainer by bulletin. It then apparently returned to the method of vacation relief in operation prior to the Supplement—at least in Claimant's case. Petitioner argues that this was a violation of the Supplement; that having agreed to the necessity for some method of vacation relief other than that used prior to the Supplement, even though Carrier was entitled by the Supplement to discontinue the particular position of Relief Signal Maintainer, it could not return to the old method but was bound to negotiate some other agreement with the Organization. We do not deny that such a procedure might have accomplished the solution of the basic problem in a mutually agreeable manner, but we can find nothing in the Supplement requiring the Carrier to enter into such negotiations. The Supplement provided for just one means of vacation relief—a position of Relief Signal Maintainer—and then clearly left it entirely within the unlimited discretion of Carrier to discontinue that position. When Carrier did so, there was no provision of the Supplement imposing any further obligation upon it with regard to providing vacation relief. Thus, there was no violation of the Supplement.

There was no mention in the claim or Petitioner's original submission of the fact that when Claimant was assigned to relieve at Jackson, he was instructed to cover his position at New Albany at the same time. This was brought out by Carrier in its submission as a defense to the claim that Claimant was forced to suspend work on his own position. Subsequently, in its Supplemental Statement filed at the Hearing, the Organization took the position that the assignment of Claimant to two positions at once was a violation of the Agreement. Since this contention was not made in the handling on the property and was not part of the claim, we make no ruling upon it at this time.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1957.