Award No. 8189
Docket No. SG-7922

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway Company (Chesapeake District) that Assistant Signal Maintainer John Garvin at Russell, Ky., be compensated for

(a) Eight hours at rate of his regular assignment on each of the dates October 5 and 14, 1954.

(b) The difference between straight-time rate and time and one-half rate at the rate of position worked on each of the dates October 5, 11, and 14, 1954. (Carrier's file SG-91.)

EMPLOYES' STATEMENT OF FACTS: The claimant, Assistant Signal Maintainer John Garvin, held a regular assignment as Assistant Signal Maintainer at MS Cabin with a tour of duty from 7:00 A. M. to 3:30 P. M., with thirty minutes off for lunch which he had secured by virtue of his seniority.

The claimant worked his regular assignment as Assistant Signal Maintainer on Monday, October 4, 1954, and was not compensated for his regular assignment on Tuesday, October 5, 1954, and was used as a Relief Maintainer on the New Hump from 3:00 P. M. to 11:00 P. M. the same date. He continued on this position as Relief Maintainer through Saturday, October 9, 1954, and resumed his regular assignment as Assistant Signal Maintainer on Monday, October 11, 1954, which he worked through Wednesday, October 13, 1954. He was then again not compensated for his regular Assistant Signal Maintainer's assignment on Thursday, October 14, 1954, and was used as Relief Maintainer on the New Hump from 11:00 P. M. Thursday, October 14, 1954, to 7:00 A. M. Friday, October 15, 1954. He was also used the following day on the same shift.

The services rendered by the claimant as Relief Maintainer at the New Hump were temporary. He was not assigned to these temporary vacancies by or through the application of bulletin rules. In performing services in these temporary vacancies on October 5 and 14, 1954, the claimant worked outside of his regularly assigned hours, for which he was paid Maintainer's rate of pay at straight-time. Also he did not start work at his regularly established starting time on Tuesday, October 5, 1954, and on Thursday, October 14, 1954, therefore, the Claimant's starting time on October 5 was changed from his regular starting time at 7:00 A. M. to 3:00 P. M. and his starting

Award 5811 of the Third Division, National Railroad Adjustment Board, Referee Edward F. Carter, covered claim of the Brotherhood of Railroad Signalmen of America that employe on The Cincinnati Union Terminal Company should be paid the punitive rate account being required to change shifts in stepping up to higher rated position in performing vacation relief work. Such claim is similar to the instant claim and the Board denied such claim, stating in the "Opinion of Board", in part, as follows:

> ". . . In the case before us, claimants were clearly assigned to higher classified positions during vacation periods of the occupants of those positions. The Agreement requires the Carrier to assign the senior employes qualified to perform the work. Award 2720. This the Carrier did when it assigned the Claimants. When Claimants take the position, they assume the added responsibilities, receive the higher compensation, work the hourly assignment of the position and take the rest days assigned those positions. This result is also in accord with Rule 12(a), Vacation Agreement, and the long-accepted practice on this Carrier. We find no basis for an affirmative award."

Summarizing, Carrier submits it has shown clearly that claim should be denied because:

> Claim (a)—When stepped up to higher rated Maintainer position to relieve for vacation, claimant assumed the hours and days and conditions of such assignment and there is no rule providing payment for his regular position (not worked) after being assigned to the vacation relief, and
>
> Claim (b)—Payment of straight time rate on dates claimant changed shifts was proper under agreement rules, under the Vacation Agreement and Interpretations thereto and under Awards of this Board dealing with similar cases.

All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization presents the confronting claim in behalf of one John Garvin, classified as an Assistant Signal Maintainer, Russell, Kentucky. The claim arose out of certain vacation relief performed by the Claimant on dates set out in the claim. Between October 5 and 9, 1954 inclusive, claimant was moved up to fill vacation vacancy of Hump signal Maintainer, assigned hours 3:00 p. m., to 11 p. m. Between October 14 and 19, 1954 Claimant moved up to fill vacation vacancy of hump Signal Maintainer, assigned hours 11:00 p. m. to 7:00 a. m. For this service on each position Claimant was paid the Signal Maintainer rate.

This claimant seeks reparations for the first period to the extent of the rate of Assistant Signal Maintainer in addition to that already received. For the service performed on the other Signal Maintainer position, during the second period set out above, additional reparations are sought to the extent of the difference between the pro-rata and punitive rate. These alleged violations are based upon alleged contravention of Rules 9(a), 19, and 23(a).

The Organization pointed out that Claimant in moving up to provide vacation relief was not permitted to work the regular assigned hours of his assignment as an Assistant Maintainer, for which he is entitled to receive the daily rate of his regular assignment and that on other dates he is entitled to the difference between the punitive and pro-rata rate of the Signal Maintainer position since the hours of assignment in the second instance constituted work performed on the first shift of a changed shift. It was asserted that the

Rules relied upon, namely those pertaining to starting time, absorbing overtime and overtime when changing from one shift to another, clearly have precedence over any special rule as Addendum 6. In regard to Addendum 6, relied upon by the Carrier, it was contended the same was only a letter, unilaterally executed by the Carrier and not signed by anyone connected with the Organization. It was further asserted that in any event this letter pertained only to Vacation relief during the year of its execution, that is, 1942, and not thereafter. It was further pointed out that following the provisions of this Addendum for any year thereafter, could not be here considered as establishing a binding custom and practice, in light of the instant protest and provisions of the effective agreement which are here controlling.

The Respondent took the position that Addendum 6 was controlling here, and that not only did such Addendum make it permissible to compensate Claimant as it had in this instance, the failure to so use him (Claimant) would have resulted in his having a valid claim within the meaning of this Addendum inasmuch as the Claimant while working as an Assistant Signal Maintainer, was likewise at the time in question the senior available Cut-back Maintainer. The Respondent pointed out that while the inclusion of the provisions of the National Vacation Agreement in the Schedule rules did not in and of itself have the effect of abrogating other basic provisions the parties here had by and through Addendum 6 given effect to the assignments here, in order that the Vacation provision could be correlated with other provisions of the Agreement, which would otherwise have been in conflict with each other.

Addendum 6 of the effective Agreement in so far as pertinent here provides:

"ADDENDUM 6

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

April 16, 1942. Er.

File S-24-2

Mr. E. S. Goodman, General Chairman,
Brotherhood Railroad Signalmen of America,
524 Eighth Avenue,
Huntington, West Virginia.

Dear Sir:

This has reference to our letter of March 10 and several discussions, with regard to vacations for signal employes under the Mediation Agreement signed at Chicago on December 17, 1941.

At the conclusion of our discussion on March 19, you asked that we write you setting forth in a general way the proposed plan for giving these vacations this year.

SIGNAL MAINTAINERS

* * * * *

Russell Division.—It is felt that vacations can be given to the men at Russell by using the senior cut-back man along the lines followed in the past in filling the place of maintainers absent account sickness, etc.

* * * * *

Yours very truly,

M. E. CRIDLIN

Asst. Supvr. Wages and Working Conditions."

We are of the opinion that Addendum 6, contrary to the Organization's contention is presently effective. It has remained in effect since 1942 and the parties have governed their relations thereby until the time of the instant protest. While the mere incorporation of the Vacation provision in the effective Agreement does not abrogate other rules in the Agreement, the parties here have in effect negotiated a change to the end that the Vacation Agreement has been integrated and correlated with the schedule rule pertaining to the filling the place (position) of another employe.

We are of the opinion that the fundamental issues here were properly disposed of by this Board in Award 5811 wherein we stated:

> * * * "Whether Claimants requested to work the higher rated positions or were directed to do so by the Carrier does not appear to us to be a controlling factor. If Claimants had a right by virtue of their seniority to perform the higher rated work, the Carrier is obligated to give it to them and to suffer reparative penalties for failure to do so.
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> "This Board has repeatedly held that senior employes must be used to fill higher rated positions when the regularly assigned occupants are absent. It is a right which grows out of seniority and which the Carrier must respect to avoid penalties. The Claimants in the present case were entitled to perform the work of the higher classification during the vacation periods involved and claims for loss would have been valid if the Carrier had failed to recognize their seniority.
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> "The question for determination is whether Claimants were being improperly used on their regularly assigned positions or whether they were properly assigned temporarily to higher classified positions to which they were entitled by virtue of their seniority. There can be no doubt of the correctness of the position of the Organization if Claimants were occupying their regularly assigned positions during the periods involved in the claim. We think the record shows clearly that claimants were temporarily assigned to higher rated positions. They filled regular assignments of occupants of higher rated positions to which they were entitled under the controlling agreement. In so doing, under the circumstances here shown, they assumed all the conditions of the higher-rated positions, including the hours assigned, rest days, and rates of pay if they exceed those of their regular assignments. If this were not so, an assistant maintainer assigned to a second shift who holds seniority entitling him to work the first shift of a Signal Maintainer temporarily absent, would be entitled to time and one-half for all work performed as a maintainer because it was outside the hours of his regular assignment and straight time pay for his regular assignment because he was required to lay off on his regularly assigned working days. No such result was contemplated by the Agreement and no such dilemma should be created by interpretation. We think that in the present case, claimants were clearly assigned temporarily to higher rated positions to which they were entitled by seniority. We realize fully that in some cases it is difficult to determine whether an employe is working a higher classified position temporarily or whether he is being improperly used on his regular assignment. This presents a question of fact. In the case before us, claimants were clearly assigned to higher classified positions during vacation periods of the occupants of those positions. The Agreement requires the Carrier to assign the senior employes qualified to perform the work. Award 2720. This the Carrier did when it assigned the Claimants. When Claimants take the position, they assume the added responsibilities, receive the higher compensation, work the hourly assignment of the position and take the rest days assigned those positions. This result is also in accord with Rule 12

(a), Vacation Agreement, and the long-accepted practice on this Carrier. We find no basis for an affirmative award."

For the reasons stated these claims are not meritorious.

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 Carrier did not violate the effective Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1957.