Award No. 8392
Docket No. SG-8002

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Seaboard Air Line that Acting Signal Maintainer Vernie E. Smith be paid at his overtime rates of pay for all time worked by adjoining maintenance employes on the Alberta, Va., maintenance territory, totaling 43 hours and 40 minutes as follows:

May 30, 1954	3½ hours	June 28, 1954	6 hours
June 13, 1954	7 hours	June 26, 1954	4½ hours
June 15, 1954	2⅔ hours	July 3, 1954	5½ hours
June 16, 1954	3½ hours	July 4, 1954	6 hours
June 20, 1954	5 hours		

EMPLOYES' STATEMENT OF FACTS: On the dates shown in the Statement of Claim, the signal apparatus on the Alberta maintenance territory required the services of the claimant, Vernie E. Smith, outside of his regularly assigned working hours, and the Carrier called employes from adjoining maintenance territories to perform the services required.

On the dates shown in the claim, the claimant was properly assigned to the Alberta maintenance territory and as such was entitled to all the signal work accruing on the Alberta maintenance territory.

The claimant was adversely affected when the Carrier did not call him for the services involved on his assigned territory as he was available to the extent stipulated in Rule 17, which is quoted for ready reference.

> "Employes will be free to leave their home station after regular tour of duty. However, signal employes assigned to or filling maintainer positions will notify the signal supervisor and chief dispatcher, on their respective territory, of their residence and telephone number, if they have a telephone, and will respond as promptly as conditions will permit, when called for service outside of regular assigned working hours; signal maintainers and assistant signal maintainers who desire to be off 'subject to call' will notify the dispatcher on their respective Division that they will not be available for calls, and will

When the limits of a territory are lengthened or shortened, not involving another headquarters or the headquarters is moved within the limits of a regularly assigned territory, the position will not be re-bulletined unless the employe assigned to such position makes a written request within twenty (20) days that it be re-bulletined in which event he shall have the right to exercise a displacement as provided in Rule 30 when displaced . . ."

The same General Chairman who progressed the instant claim so handled a similar claim on the Southern Railway in 1946 in his capacity as General Chairman on that property, which was denied by the Third Division in Award 3992, Referee Carter holding that:

"It is true that the Agreement does not specifically require a signal maintainer to live at or near his headquarters. We think that the assignment of a headquarters inferentially requires it. But whether it does or not, the contract being silent on the subject, it is the province of management to require it. It had been the practice of the Carrier on this railroad to require it and the record shows that Wallace well knew it. We do not think the requirement was unreasonable when the nature of the work is considered.

* * * The operation of the railroad being the function of management, and there being no agreement provision limiting its action with respect thereto, its decision that signal maintainers must live at or in proximity to assigned headquarters is controlling."

This holding was endorsed in Award 5768, Referee Smith.

There is no merit to the instant claim and it should be denied.

Carrier affirmatively states that all data contained herein has been made known to Organization representative.

(Exhibits not reproduced.)

OPINION OF BOARD: During a period which included the dates shown in the claim the petitioning employe was temporarily filling a Signal Maintainer position with assigned territory from Mile Post 46.7 (north end of McKenney, Va.) to Mile Post 80.2 (south end of LaCrosse, Va.), a distance of 33.5 miles, with headquarters as Alberta (14.4 miles from McKenney and 19.1 miles from LaCrosse). The previous Signal Maintainer resided at the headquarters point. Claimant Smith resided at LaCrosse before he was assigned to this position. Claimant was told by his Supervisor that in filling this position he would be expected to reside at Alberta, and that if he did not do so he would be considered unavailable and not called for emergency work. Claimant did not move to Alberta and thus was not called for emergency signal maintenance work in his assigned territory on the dates specified in the claim. Organization contends without contradiction that this work was performed by employes in adjoining territories.

The question here is whether, under the terms of the subject Agreement, a Signal Maintainer's failure to reside at headquarters point—as requested by the Carrier—deprives him of the right to be called for signal maintenance work, outside his regularly assigned working hours, which arises in his assigned territory. As already held in Award 8391, Rule 17 bars the Carrier from requiring employes covered by this Agreement to live at the headquarters

point. Carrier does not deny the present Claimant's contention that he was ready and willing to perform the subject work on the dates in question. Nor is it contended Claimant had registered off "subject to call" on these dates, or that Carrier was not in possession of Claimant's residence address and telephone number. We are advised that Claimant possessed his own automobile.

Rule 17 provides that Signal Maintainers, or employes filling such positions, who are not registered off "subject to call," "who can be called by telephone or reside within calling distance and calling facilities are available, will be called first for trouble on their assigned section or territory * * *."

This provision is quite clear and precise. Since it is not contended Claimant could not have been reached as provided in the rule, Carrier was obligated to call him on the occasions in question. We are not unmindful of the need for prompt attention to the repair of Carrier's signal facilities, to which Management draws our attention. This Board is without authority to revise a rule which the parties themselves have mutually agreed upon, however. The claim must be sustained.

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 Employe involved in this dispute are respectively Carrier and Employe 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July, 1958.