

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Terminal Railroad Association of St. Louis that:

Vacation Relief Maintainer E. R. Benson be paid the time and one-half rate for eight (8) hours worked each day on Saturday, January 22; Sunday, January 23; Saturday, January 29; and Sunday, January 30, 1955. Also that he be paid straight-time for eight (8) hours covering time he was not permitted to work each day on Tuesday, January 18; Wednesday, January 19; Tuesday, January 25; and Wednesday, January 26, 1955.

EMPLOYEES' STATEMENT OF FACTS: Vacation Relief Maintainer E. R. Benson was regularly assigned to such position on September 17, 1954.

Copy of bulletin issued by Signal Engineer Oscar E. Miller, under date of September 17, 1954, File No. 30, is attached hereto and shown as Brotherhood's Exhibit No. 1 and states that E. Benson was regularly assigned to this position, his regular assignment when not on vacation relief work provides for rest days on Saturdays and Sundays.

On the dates involved in this claim the claimant was assigned to fill temporary vacancies which were not vacancies caused by the incumbents being on vacation. He was therefore not performing the duties of a Vacation Relief Maintainer.

The position of Vacancy Relief Maintainer assigned to E. R. Benson was created in accordance with provisions of Paragraph 2 of Memorandum of Agreement effective September 1, 1949.

For ready reference Memorandum of Agreement is quoted:

"MEMORANDUM OF AGREEMENT

Superseding Memorandum of Agreement dated Nov. 15, 1943

vacation. The rest days of the position were Tuesday and Wednesday. On the following Thursday, January 20, 1955, an employee assigned to a position at North Market Street tower with the same days of rest was assigned to the vacancy at Biddle Street. On the same date the claimant was assigned to the vacancy at North Market Street tower. Upon completing the fifth day of the assignment at Biddle Street the vacancy at North Market Street tower was known and because it carried the same days of rest, the claimant was told to take Tuesday and Wednesday off and report at North Market Street tower on Thursday. This resulted in his working five days in the work week of the position to which assigned, as well as five days in the calendar week beginning on Monday as contemplated in Paragraph 2 of the Memorandum Agreement of June 29, 1949.

Rest days are assigned to positions rather than employees and rest day relief men are assigned to work on the rest days of positions, thus it is apparent that the claimant is maintaining that he should have been permitted to work on the rest days of the position which would have resulted in his working continuously throughout the claim period and in there being two men, the regularly assigned rest day relief man and the claimant, working the rest days. When vacation relief men are assigned to fill a temporary vacancy arising under item (a), caused by men on vacations, or under item (b), caused by sickness or other reasons, they assume all the conditions, including rest days, of the position relieved. The claimant was handled strictly in accord with the provisions of the agreement in that he was required to observe the rest days of the position he was relieving.

Item 2 of the agreement provides that positions of vacation relief men are full-time assignments at pro rata rates with Saturdays and Sundays off where possible. When they are relieving employees with other than those days off Saturday and Sunday are work days of the assignment, which makes it impossible for the vacation relief men to have them as off days, thus nullifying the organization's position that Saturday and Sunday were his rest days.

Item 4 of the agreement provides that any employee assigned under Paragraph 2 for other than vacation relief shall be compensated in accordance with the provisions of the current contract. This would cover overtime, change of shifts and work on rest days. The claimant comes within that category and as there was no overtime, change of shifts or work on rest days involved there was no violation of the agreement.

The claimant was handled in exactly the same manner as has been done since the effective date of the agreement without any questions or time claims arising, which is convincing proof of the propriety of our actions.

There is no valid basis for the claims and they should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: There are several issues in this case. However, one element of it seems dispositive and so we shall proceed to it.

The Agreement provisions involved are:

"2. That vacation relief positions will be established, the duties of which will be to (a) relieve men on vacations; (b) relieve men absent account sickness or for other reasons; (c) work in any position to which assigned when there is no vacation or other relief work to perform. (See Section 4.) Such assignments will be full-time positions, at pro rata rates, with Saturdays and Sundays off where possible."

"4. Any employe assigned under Paragraph 2 for other than vacation relief or any employe assigned under Paragraph 3 for any purpose whatsoever shall be compensated in accordance with the provisions of the current contract."

Claimant alleges, and it is undenied, that on the days here involved he was relieving for a reason other than vacation. Therefore, he reasons, Section 4 is applicable. However, he does not say what provisions of the contract are thereby brought into play, let alone show that they require a result different from the course followed by the Carrier.

We need and do not decide whether the other contentions about the appropriate work and rest days are colorable. So much of Claimant's case is based upon Section 4 that the claim is incomplete without some indication of what other contract provisions he invokes.

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 Employees involved in this dispute are respectively Carrier and Employees 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1960.