Award No. 10005
Docket No. SG-9176

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad Company in behalf of:

> Signalmen C. F. Sanders and E. W. Prather for time spent on the territory of Signalman A. B. Cox, Scott City, Kansas, while Mr. Cox was on his annual vacation, starting September 6, 1955. [Carrier's file VG-S 225-280]

EMPLOYES' STATEMENT OF FACTS: Signalman A. B. Cox with headquarters at Scott City, Kansas, had his vacation of fifteen days beginning with September 6, 1955.

No relief maintainer was assigned to work this position during the period A. B. Cox was on vacation, such assignment being divided between the two adjoining Signalmen, C. F. Sanders with headquarters at Tribune, Kansas, and E. W. Prather with headquarters at Utica, Kansas.

As a result of failure of the Carrier to provide a relief maintainer on the Scott City territory during this period, it was necessary for Signalmen C. F. Sanders and E. W. Prather to perform work on the Scott City territory, in addition to protection outside their regularly assigned working hours, as follows:

C. F. Sanders	—	9	—	8	— 55	—	4 hours
		9	—	9	— 55	—	8 hours
		9	—	21	— 55	—	8 hours
		9	—	22	— 55	—	8 hours
					Total	—	28 hours
E. W. Prather	—	9	—	6	— 55	—	8 hours
		9	—	16	— 55	—	3 hours
		9	—	22	— 55	—	4 hours
					Total	—	15 hours
Total time spent on Scott City territory						—	43 hours

all time claimed is counted in this case it would exceed the exact 25% by only 13 hours.

The Carrier is aware that when statement is made that a term used is not an exact yardstick, there is no exact formula to determine the exact amount of variation allowable. Referee Morse recognized this when he made the following statement in his interpretation which the Carrier has cited:

> "Of course, there is unlimited opportunity for arguments and bickerings over the application of Article 10(b) to the vacation plan, especially if the parties seek to squeeze out of it unintended advantages by applying the language in a narrow and strict manner to exceptional fact situations. If the parties approach the application of the Article in that spirit the referee doubts if there is any language that can be used which will prevent disputes and disagreements over its application. However, there is one thing that is perfectly clear, and that is: If the application of Section (b) of Article 10 in its present form produces unreasonable results, then the parties should proceed under Article 13 or Article 14 to negotiate a modification of it; but they should not expect this referee to modify it by way of interpretation."

We do not believe 13 hours divided between two employes is an unreasonable variation from the 25% measure; but if it is held to be so, there is no basis for payments of 43 hours as claimed because the rule clearly permits distribution of at least 30 hours of work.

It was the judgment of the Carrier officers in this case that there did not exist a requirement to provide a vacation relief worker to protect the territory of Signalman Cox while he was on vacation when the claimants would be available in emergency. This judgment was based on the knowledge that emergency situations do not arise every hour of every day and the main function of the signalman is to maintain the signal system so that the minimum amount of failures will occur. Under these conditions it was logical that the territory could be protected for three weeks by availability of other signalmen for such emergencies as might arise.

Based on total time claimed, the excess hours required to protect the work was not unreasonable and the actual time on the absent employe's territory was well under an exact 25%. In these circumstances the Carrier holds first, that the 25% was not exceeded and second, that by counting the total time claimed the excess was not beyond the bounds of the intent of Referee Morse's interpretation of and recommendation for application of Article 10(b) of the Vacation Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: Claims here are premised on the application of Article 10 (b), National Vacation Agreement to the facts here. Briefly the facts before us show that on September 6, 1955, Signalman A. B. Cox, Scott City, Kansas, began his annual vacation of fifteen days. That during the period of his said vacation it is alleged that Signalman C. F. Sanders, headquarters Tribune, Kansas, put in twenty-eight hours (28) service on the territory of Cox during his vacation period and that also during said vacation period, Claimant Prather also performed fifteen (15) hours service on the vacationing employe's territory. That as a result of such required service on territory outside their own districts, the Claimants were required to perform

service for a period of forty-three (43) hours, or a combined total of thirteen (13) hours, in excess of the 25% number of hours allowable to Carrier to be distributed among fellow employes without the necessity of Carrier being required to assign a relief worker. In the matter here, the work load of the vacationing employe consisted of one-hundred twenty hours, as computed by the vacation allowance granted by Carrier, consisting of fifteen eight hour days or a total of one-hundred twenty hours.

Carrier contends the figure of forty-three hours used by the Organization is an incorrect calculation. That the figure of forty-three hours includes time spent by Claimants on their own territories, on claim dates, and is improperly considered as a part of the work load as provided in the Vacation Agreement.

The Board, after a consideration of the record before us, the Interpretations as placed upon Article 10 (b) of the Vacation Agreement, by Referee Wayne Morse, finds that this applies only to the work load of the vacationing employe's assignment. There is nothing before us here showing that either of the Claimants were burdened with extra work on their own regular assignments, nor were they required to perform any services on their own assignments which remained as not performed, while they were on the vacationing employe's assignment. The Organization argues here that the time consumed by Claimants in traveling from their own territories to the vacationing employe's territory and their return trip should be properly included in determining the hours such Claimants were performing service off their own territory.

Article 10 (b) states clearly that not more than the equivalent of twenty-five percent of the work load of a given vacationing employe can be distributed among fellow employes without hiring a relief worker unless the same is agreed to by the local union committee or official. From the record before us there is indication the amount of time Claimants performed services on the vacationing employe's territory would not exceed twenty-seven hours. The balance of time claimed consists of time consumed in travel from Claimants' headquarters to the employe's territory and return to their own territory, plus time consumed by the Claimants in keeping up the work on their own territories. A reference to the Interpretations of Article 10 (b) of the Vacation Agreement by the Referee does not lay down a hard and fast rule that the twenty-five percent figure shall apply as an exact mathematical yardstick in measuring distribution of work. We believe it was the intent of the parties in negotiating Article 10 (b), that work load as referred to, applies to work performed on the vacationing employe's territory. If the parties had so intended to include time consumed in travel from one territory to another, the parties would have agreed to such a provision. This question was not raised before Referee Morse, hence no Interpretation covering this specific question.

It is the conclusion of the Board that the record here does not sustain the allegations for a favorable award. The Claimants make no showing that as a result of their claims as alleged, any hardship was placed on the Claimants as a result of the extra service performed by them, nor is there evidence here they were required to work any hours on their own territories in excess of the usual hours required on their regular assignments.

Since we have concluded that time required going to and from the Claimants' territories to a vacationing employe's territories is not considered by us as proper to include in the work load, as discussed in the foregoing we believe such question should be a matter for further discussion and negotiation between the parties.

The claims do not merit a sustaining award.

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 Agreement as alleged.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of July, 1961.