Award No. 10130

Docket No. SG-9834

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Signalmen of America on the Florida East Coast Railway Company in behalf of:

Assistant Signalman T. E. Kennedy for the difference between Assistant Signalman's rate of pay and Maintainer's rate of pay for eight (8) hours on June 14, 1956, while working alone and performing Maintainer's work on Signal Section No. 1, with headquarters at South Jacksonville, Fla.

EMPLOYES' STATEMENT OF FACTS: Prior to and following the dates embraced in the instant dispute, the claimant, T. E. Kennedy, was regularly assigned as Assistant Signalman on Signal Section No. 1, with headquarters at South Jacksonville, Florida, working under Signal Maintainer Donald Johns.

During the period of June 4 through 22, 1956, Signal Maintainer Donald Johns was on his regularly assigned annual vacation, leaving Claimant Kennedy working alone on the regularly assigned Signal Maintenance Section No. 1. On June 14, 1956, during the period that Signal Maintainer Johns was on vacation, the Carrier directed the claimant to clear signal trouble on Signal 10.8, which took approximately three hours to clear.

Under date of July 26, 1956, General Chairman J. E. Dubberly filed claim with Superintedent Communications and Signals C. B. Cargile, in behalf of Claimant Kennedy for 8 hours' pay at Maintainer's rate of pay account of the service he performed on June 14, 1956, all of which were Maintainer's duties and work. The Carrier agreed to pay Claimant Kennedy for 3 hours while actually performing work clearing trouble on Signal 10.8, but refused to allow the claimant 8 hours' pay for the entire tour of duty on June 14, 1956.

In appealing the instant dispute to **Chief Operating Officer C. L. Beals** in a letter dated **October 20, 1956, General Chairman Dubberly** advised that he had made a mistake in claiming only 8 hours for June 14, 1956, as the claimant should have been paid the Maintainer's rate of pay for the entire period that Maintainer Johns was on vacation from June 4 to 22, 1956, as follows:

provides in part ". . . when an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate . . ." Significantly, there appears in this rule no reference to the higher rate being applicable on a daily basis, but instead provides for such increased rate only "when an employe is required to fill the place of another employe receiving a higher rate of pay . . ." or, in other words, only while occupying a higher rated position. In Third Division Award 5252, having reference to a rule which provided pay at higher rate while occupying a higher rated position, the Board stated in its Opinion:

> "When employes work in a higher rated position they are entitled to the higher rates while occupying the position. (Rule 52.) As the claimant worked at the higher rate for three hours, he should be compensated at the higher rate for such period, less what has been paid for this time."

Also see Third Division Awards 6318, 6319 and 6965.

4. The Railway maintains that Assistant Signalman Kennedy was correctly paid at the maintainer's rate for the hours actually engaged in the performance of maintainer's duties on June 14, 1956, and at assistant signalman's rate for the lower rated helper's work which he performed during the remainder of his tour of duty on that date. Therefore, nothing more is due the claimant.

For the reasons stated, the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railroad Signalmen of America, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matter cited and relied upon by the Carrier insofar as they relate to the case as handled on appeal on the property have been discussed with the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a case where an Assistant Signalman was instructed by a Wire Chief at 7:00 A. M. on June 14, 1956 to locate and correct a defective condition at Signal 10.8 located within the limits of Section No. 1. This Section was assigned to a Signal Maintainer who at the time was on vacation (June 4 — June 22, 1956). The Assistant Signalman who is the party involved in the instant case was regularly assigned to work at Section No. 1 under the direction of the vacationing Signal Maintainer.

It took the Assistant Signalman, working alone, approximately three hours to correct the defective condition. The Company compensated him for three (3) hours at the maintainer's rate and five (5) hours at the assistant signalman's rate for his eight (8) hours of work on June 14. The claim is for a full days wage at a maintainer's rate for that day.

Rule 14 of the Agreement reads:

> "RELIEF SERVICE
>
> "Except as provided in Rule 35(b), when an employe is required to fill the place of another employe receiving a higher rate of pay,

he shall receive the higher rate. If an employe is temporarily required to fill the place of an employe receiving a lower rate of pay, his rate shall not be changed."

There is no doubt that the Claimant was required "to fill the place of another employe receiving a higher rate of pay" on June 14, 1956. Nor is there any restrictive phrase concerning a required minimum of hours before such an employe becomes eligible for the higher rate of pay (see Award 7587). Nor is the case on all fours with Awards 7049 and 7156 (where there was no vacancy).

Here we had a vacancy in the position of the maintainer who was on vacation. Evidence was presented to show that the company had attempted to restrict the scope of the Claimant's duties by having the maintainer (before he left on vacation) assign to the Claimant only duties which could be performed by a helper when working alone or with other helpers. This proved of no value to the Carrier on June 14, 1956.

On that day, Claimant reported to work under a provision stating that eight (8) consecutive hours shall constitute a day's work. He no sooner reported at 7:00 A. M. when he was called upon in the absence of the maintainer to perform maintainer's work. Regardless of the number of hours it required the Claimant to correct the defective condition, he was "required to fill the place of another employe receiving a higher rate of pay" and he should be compensated at that higher rate.

We see nothing in Rule 14 relating to hours. The position is what is controlling. Claimant filled the position of an absent maintainer on June 14 and for that day should be compensated accordingly.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing therein, 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

The Carrier violated the effective Agreement to the extent indicated in the above Opinion.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1961.