Award No. 10761
Docket No. SG-10317

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, and particularly Article 10(b) of the National Vacation Agreement of December 17, 1941, as amended, when it failed to provide proper vacation relief workers on the Hazard Signal Maintenance territory and thereby distributed more than twenty-five per cent of the work load of the vacationing employes, namely, Signal Maintainer M. Kelley and Signal Helper R. Smith, among fellow employes.

(b) Signal Maintainer Paul Pennington and Signal Helper McKinley Clemons, Jr., with headquarters at Krypton, Kentucky, be compenated at their respective rates of pay for hours worked on January 7, 8, 9, 22, and 25, 1957, while performing work on the Hazard territory during the time the incumbents were on vacation. The total hours spent on the Hazard territory amounted to seventy-four (74) hours and twenty (20) minutes. (Carrier's File G-303-3; G-303)

EMPLOYES' STATEMENT OF FACTS: Mr. M. Kelley is employed as Signal Maintainer with the Carrier, with headquarters at Hazard, Ky. He was assigned a vacation period from January 7, 1957, through January 28, 1957, and received his vacation as assigned. Mr. R. Smith is employed as Signal Helper and is regularly assigned to work with Signal Maintainer Kelley, with headquarters at Hazard, Ky. Signal Helper Smith was assigned a vacation period from January 7, 1957, through January 18, 1957, and received his vacation as assigned. The Carrier did not assign a vacation relief man to Signal Maintainer Kelley's territory during the time that he and Signal Helper Smith were on vacation, but required Signal Maintainer Paul Pennington and Signal Helper M. Clemons, Jr., who are regularly assigned to the adjacent signal maintenance territory at Krypton, Ky., to assume the responsibilities and duties of Signal Maintainer Kelley's signal maintenance

OPINION OF BOARD: This dispute involves an alleged violation of an Agreement between the Louisville and Nashville Railroad Company and two of their employes represented by the Brotherhood of Railroad Signalmen of America. The claim of the General Committee of the Brotherhood of Railroad Signalmen of America alleges that:

> "(a) The Carrier violated the current Signalmen's Agreement, as amended, and particularly Article 10(b) of the National Vacation Agreement of December 17, 1941, as amended, when it failed to provide proper vacation relief workers on the Hazard Signal Maintenance territory and thereby distributed more than twenty-five per cent of the work of the vacationing employes, namely, Signal Maintainer M. Kelley and Signal Helper R. Smith, among fellow employes.
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> "(b) Signal Maintainer Paul Pennington and Signal Helper McKinley Clemons, Jr., with headquarters at Krypton, Kentucky, be compensated at their respective rates of pay for hours worked on January 7, 8, 9, 22, and 25, 1957, which performing work on the Hazard territory during the time the incumbents were on vacation. The total hours spent on the Hazard territory amounted to seventy-four (74) hours and twenty (20) minutes.

Signal Maintainer M. Kelley and Signal Helper R. Smith, were assigned headquarters at Hazard, Kentucky, and the Claimants, Signal Maintainer Paul Pennington and Signal Helper McKinley Clemons, Jr., were assigned headquarters at Krypton, Kentucky. The two territories adjoined.

The Kelley-Smith and the Pennington-Clemons work hours were identical — Monday through Friday, seven o'clock A. M. to four o'clock P. M., with one hour for lunch.

Kelley was entitled to three weeks vacation and started his vacation on January 7, 1957 and returned to work on January 28, 1957. Smith started his vacation on January 7, 1957, and since he was only due two weeks vacation, returned to work January 21, 1957.

During the absence of Kelly-Smith on vacation, Pennington-Clemons performed work on the Kelly-Smith territory and the claim states that this total of work amounts to seventy-four (74) hours and twenty (20) minutes. The claim further states that this is more than twenty-five (25%) percent of the work load of the vacationing employes.

The employes claim that Rule 10(b) of the Vacation Agreement has been violated. The rule reads:

> "Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

At record page (33) the Organization asserts that the Claimants performed thirty-seven (37%) percent of the work load and enumerate this work as follows:

"Following is a list of the dates and hours that Signal Maintainer Pennington and Signal Helper Clemons were required to spend in performing work on the Hazard territory and also the nature of the work that was performed:

January 7, 1957 — Bonding rails at Viper — Pennington 8 hours — Clemons 8 hours

January 8, 1957 — Bonding rails at Viper — Pennington 8 hours — Clemons 8 hours

January 9, 1957 — Changing relays between Dent and Blackey with Signal Supervisor J. F. Wiseman. — Pennington 8 hours — Clemons 8 hours

January 22, 1957 — Checked crossing signals at Defiance, Roxanna, Ermine, Mayking, Neon, Southeastern, and also cleared zero ground at Neon. — Pennington 8 hours — Clemons 8 hours

January 25, 1957 — Adjusted electric locks north end of Ecco and north end of Lennut. Pennington — 5 hours and 10 minutes, Clemons 5 hours and 10 minutes.

Total hours:

Pennington — 37 hours and 10 minutes

Clemons — 37 hours and 10 minutes

"The total time consumed by Pennington and Clemons on the vacationing employes' territory during the time that they were on vacation amounted to 74 hours and 20 minutes.

"The amount of hours that the vacationing employes were on vacation amount to 200 hours (three weeks at 40 hours per week for Kelley and two weeks at 40 hours per week for Smith). Inasmuch as the claimants were required to spend a total of 74 hours and 20 minutes off their assigned territories in performing work on the vacationing employes' territory, and since such amount of time amounted to considerably more than 25% of the work load of the vacationing employes' territory (actually 37%), which is a direct violation of Article 10(b). * * *"

The Carriers contend that Rule 10(b) of the Vacation Agreement was not violated and that (1) the Organization has totally failed to show that the Claimants performed more than twenty-five (25%) percent of the vacationing employes' work, (2) that there is no justification for the monetary feature of the claim, (3) that Article (6) of the 1961 Vacation Agreement applies. Article (6) reads as follows:

"6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

and (4) the Carrier maintains that under the terms of Article (6) that Carrier is not obligated to provide a vacation relief worker unless the failure to do so creates a burden on the employes remaining on the job. Carrier maintains that the record shows that the performance of this vacation work in no manner created a burden on the Claimants.

Signal Helper Smith returned to work on January 21, 1957. The Organization claims that Signal Helper Clemons worked eight hours on January 22, 1957 and five hours and ten minutes on January 25, 1957, performing vacation work on the Hazard territory. If Signal Helper Clemons did work on this territory on these dates he was not performing vacation relief work as the Signal Helper Smith had returned from his vacation.

The record discloses at Page (25) that on January 8, 1957, only eleven (11) rails were laid and that this work was done between the hours of seven o'clock A. M. and nine o'clock A. M. Therefore, only two hours could validly be charged to this work whereas the Claimants set out eight hours.

It is the opinion of this Board that the claim on behalf of Signal Helper M. Clemons, Jr., be denied. While Signal Helper Smith was absent on vacation he missed a total of eighty hours work. Thus, when we apply Article 10(b) to these facts it is evident that Carrier can properly assign less than twenty hours of the disputed work to Signal Helper Clemons. If we deduct from the thirty-seven hours claim six hours for work claimed on January 8, 1957, eight hours for work claimed on January 22, 1957, and five hours and ten minutes for work claimed on January 25, 1957, we will be deducting nineteen hours and ten minutes. Deducting this figure from the thirty-seven hours and ten minutes claimed, there is left only sixteen hours of vacation relief work done by the helper which is well within the established twenty-five (25%) rule. In addition, the helper was paid for his full time and there is no showing that as a result of the vacation relief work which he did that there was any undue burden placed upon him on his own territory.

Both sides rely and quote freely from Referee Morse's interpretation of both Rule 10-(b) and Rule (6) and this Referee has studied Referee Morse's interpretation of the rules very carefully and feels that the findings contained herein with reference to Signal Helper Clemons are consistent with Referee Morse's interpretations.

The claim of Signal Maintainer Paul Pennington presents a slightly different set of facts. The claim includes travel time consumed by this Claim-

ant in connection with maintenance work on Kelley's territory. In Referee Morse's interpretation of Rule 10(b) he defined the term "work load" to mean:

> "The term 'work load' as used in Article 10(b) is synonymous with work, duties, tasks, quantity job assignments."

It is the opinion of the Board that only the work that would have been performed by the vacationing Signal Maintainer, had he not been on vacation, can be considered as part of Signal Maintainer Kelley's work load. This Board has held several times that while traveling time within assigned hours is considered a "service" to be paid for it cannot be considered maintenance work. Referee McMahon in Award No. 6400 states:

> "* * * The fact the employes were required to travel does not constitute work, as provided by the Scope Rule, and we hold the traveling as required was a service, and not work generally recognized as signal work within the meaning of the Scope Rule."

Referee Fox in First Division Award #9572 stated:

> "* * * It cannot have been intended to cover deadheading, which all agree is not service, in the sense that term is commonly used and understood. We think it may fairly be assumed, that, in entering into the Agreement, the parties thereto were fully cognizant of the distinction between service and deadheading, and worded their agreement with that distinction in mind."

Referee McMahon stated in Award #10005:

> "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."

And Referee McMahon states in Award #10007:

"The proof here submitted by the employes does not support the claim. The employes have made no effort to break down the time each Maintainer performed service on dates alleged other than the bare statement they performed eight hours service. No evidence is produced as to the amount of travel time consumed by the Maintainers from their headquarters to the vacationing employe's territory and return to their headquarters. Such time consumed has been held by this Board in considering actual work performed as not proper in relation to the distribution of the work load of the vacationing employe."

When we deduct this travel time as well as the six hours overcharge for January 8, 1957, we have the following computation:

January 7, 1957 — 7 hours
January 8, 1957 — 2 hours
January 9, 1957 — 7 hours
January 22, 1957 — 7 hours
January 25, 1957 — 5 hours 10 minutes

Total — 28 hours 10 minutes.

This brings the claim down below the twenty-five (25%) percent provision and it is the opinion of the Board that there has been no violation of Article 10(b) in the case of the Claimants, Pennington-Clemons.

In addition we do not think there is any showing in the record that the performance of the vacation work created a burden on the Claimants.

For the reasons stated herein the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 7th day of August 1962.

LABOR MEMBER'S DISSENT TO AWARD 10761 —

DOCKET SG-10317 —

The majority, consisting of the Carrier Members and referee, went much further than necessary to make a case for the Carrier. This fact is demonstrated by their ignoring Rule 60 of the Agreement between the parties and their citation of Award 6400, 10005, and 10007, all by Referee McMahon, and particularly by their citation of First Division Award 9572, concerning deadheading. There is no deadheading involved in this case. The "traveling time" involved here clearly comes under the provisions of Rule 60 of the Agreement which provides that:

> "It is understood and agreed that operating or riding on track motor cars or other conveyances used in lieu of motor cars, **is work** and is to be paid for as such under the provisions of this Agreement." (Emphasis ours.)

Since Rule 60 unequivocally provides that such time "**is work**", the error in the majority's statement that such time "is considered a 'service' to be paid for it cannot be considered maintenance work" is apparent.

Award 10761 is in error and a misguided interpretation of the Agreement; therefore, I dissent.

/s/ **W. W. Altus**
W. W. Altus