

Award No. 12637
Docket No. SG-11819

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY
(Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

In behalf of Signal Inspector R. L. Stevens for payment in addition to his monthly rate for time worked from 9:19 P.M. to 12:00 Midnight, August 2, 1958, when he was called to perform the work of a Signal Maintainer clearing trouble on Crossover No. 103 at Wellsville, Kansas, such additional payment to be made at the time and one-half rate of pay of Signal Inspector, or time and one-half the hourly rate of pay of CTC Signal Maintainer, whichever is the greater. [Carrier's File No. 132-91-5.]

EMPLOYES' STATEMENT OF FACTS: Mr. R. L. Stevens is regularly assigned to the position of Signal Inspector on the Eastern Division of this Carrier with assigned headquarters at Ottawa, Kansas. The position of Signal Inspector held by Mr. R. L. Stevens is classified under Section 2 of Article I of the current Signalmen's Agreement and is compensated in accordance with the provisions of Section 1 of Article V of the current Signalmen's Agreement.

On Saturday, August 2, 1958, Signal Inspector Stevens was called from his home at Ottawa, Kansas, at 9:19 P.M. to go to Wellsville, Kansas, to clear trouble on the Wellsville, Kansas signal maintenance territory.

Signal Inspector Stevens cleared the trouble on crossover No. 103 at Wellsville, completing the work at 12:00 Midnight. Signal Inspector Stevens turned in a time slip for performing the above signal maintenance work which was not a part of his regular assigned duties but the Carrier refused to allow the amount of time claimed.

Under date of August 18, 1958, Local Chairman S. P. Creson presented a claim in behalf of Signal Inspector Stevens to Mr. J. H. Blake, Superintendent, as follows:

Inspectors on Saturdays. In all other respects the terms and conditions surrounding the monthly rate covered thereby as set forth in Rule 12-(b)-1 of the Signalmen's Agreement in Award No. 5935 did not differ from the terms and conditions surrounding the monthly rate for Signal Inspectors as set forth in "Article V, Section 1—Signal Inspector" of the current Signalmen's Agreement. It is accordingly obvious that the position the petitioning Brotherhood has advanced in the instant dispute with regard to the monthly rate of the claimant Signal Inspector is the reverse of and directly contrary to that advanced by the same Brotherhood with regard to a similar monthly rate in Award No. 5935.

Since Article I, Section 2 expressly provides that Signal Inspectors " * * * may perform any Signal Department work * * * ", it makes no difference whether the claimant Signal Inspector Mr. Stevens was called " * * * to perform the work of a Signal Maintainer", as alleged by the General Chairman, or to perform some other type of signal work. It was Signal Department work. It is also significant that the Petitioner has not advanced a contention that the Carrier violated the Signalmen's Agreement in failing to use a Signal Maintainer to perform the work that was required of Signal Inspector Stevens on August 2, 1958 after it was impossible to obtain the services of a Signal Maintainer.

Moreover, since the Employes have not and cannot point to an agreement rule which requires the payment of additional compensation to a Signal Inspector when called and used on a Saturday, it will be obvious that there is no support for the Employes' claim under the agreement rules and they have failed to meet their burden of proof of an agreement violation.

In conclusion, the Carrier respectfully reasserts that the Employes' claim is wholly without support under the agreement rules and should be denied for the reasons heretofore set forth.

OPINION OF BOARD: The facts are not in dispute. Signal trouble developed on a Saturday. Upon being unable to locate the Maintainer assigned to the territory on which the trouble occurred, Carrier endeavored over a period of two hours, without success, to locate other hourly rated employes which included five Maintainers and four Signalmen to correct the trouble. It was following this effort that Carrier used Claimant to correct the trouble. The Organization claims the work is that of a Signal Maintainer and that the Claimant's regular monthly rate of pay covers only work done by him as an Inspector; therefore, when he performed the work of a Signal Maintainer he was entitled to be paid compensation over and above his regular monthly rate.

Carrier contends that the Agreement between the parties does not prohibit the use of Claimant in the manner involved here. To the contrary Carrier finds express contractual support for its position in Article 1, Classification, Section 2, which in pertinent part provides as follows:

"SIGNAL INSPECTOR

An employe who is assigned to and whose principal duties are the inspection and testing of signal appliances, apparatus, circuits and appurtenances, but who may perform any Signal Department work, * * *." (Emphasis ours.)

With respect to the question as to whether or not the Claimant is entitled to extra compensation over and above his regular monthly rate, the Carrier relies on Article V, Section 1 which provides that the Signal Inspectors monthly rate of pay covers "all services rendered except on Sundays". (Emphasis ours.)

The Board finds that the work in question was clearly signal department work; the current Agreement explicitly states that a Signal Inspector "may perform any Signal Department work"; the Agreement further provides that the said Signal Inspector's monthly rate of pay covers "all services rendered except on Sundays". This incident did not involve rendering service on Sunday. Thus, in effect, this Board is being asked to grant something the Agreement does not provide. We are precluded from adding, subtracting or modifying the provisions of an Agreement. (See Awards 4259, 8538 and 12192).

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 19th day of June 1964.