

Award No. 12638

Docket No. SG-11825

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 at the time and one-half rate of Signal Maintainer for time he worked from 4:30 P. M., Saturday, July 26, to 4:15 A. M., July 27, 1958, less whatever payment he was allowed from 12:01 A. M. to 4:15 A. M., July 27, 1958, in addition to his regular monthly rate account being called to perform the work and duties of a Signal Maintainer in violation of the intent and provisions of Article I, Section 2, of the current Signalmen's Agreement. [Carrier's File No. 132-91-4.]

EMPLOYEES' 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, July 26, 1958, Signal Inspector Stevens was called from his home at Ottawa, Kansas, to clear a case of signal trouble between Ottawa and Holliday. Signal Maintainer Spencer, the regular assignee to the signal maintenance territory on which the trouble occurred, could not be contacted and Signal Inspector Stevens worked from 4:30 P. M., July 26, 1958, until 4:15 P. M., July 27, 1958, performing the routine Signal Maintainer duties of tracing and clearing the case of signal trouble.

In view of the fact that Signal Inspector Stevens was called to perform routine signal maintenance work which was not a part of his assigned duties, Local Chairman S. P. Creson presented a claim in behalf of Signal Inspector Stevens and the senior available Signal Maintainer to Mr. J. H. Blake, Superintendent, under date of August 18, 1958, as follows:

rate covers for all services rendered * * * on the " * * * working days of a month (calendar days less Sundays) * * *" and that "Services rendered on Sundays will be paid for under Section 13, Article II." If Article I, Section 2 and the paragraph which appears under the monthly rate prescribed for Signal Inspectors in Article V are considered together, as they should be, it will be obvious that if it is permissible to call and use a Signal Inspector on Sundays, and the rules so provide, it is equally permissible to call and use a Signal Inspector on Saturdays. It will be equally obvious that, since the monthly rate prescribed for Signal Inspectors covers all services rendered on Mondays through Saturdays, the respondent Carrier is free to use Signal Inspectors whenever necessary on Mondays through Saturdays, and there was no occasion to include a provision in the agreement rules which either authorized their use on such days or prescribed the compensation that would be allowed if so used. Expressed in another manner, so long as Article I, Section 2 and "Article V, Section 1—Signal Inspector" do not prohibit the use of Signal Inspectors on a call basis on Mondays through Saturdays, it cannot be successfully contended that Signal Inspectors are not subject to call. The Third Division has repeatedly held that the rights and prerogatives of Management are only limited by the agreement rules, leaving to Management such authority as has not been eliminated or limited by the agreement rules. See Third Division Awards Nos. 6270, 7113 and many others.

A comparison of "Article I, Section 1—Signal Foreman" and the paragraph which follows the monthly rate prescribed for Signal Foremen in Article V, Section 1, with "Article I, Section 2—Signal Inspector" and the paragraph which follows the monthly rate prescribed in Article V, Section 1 for Signal Inspectors will also reveal that:

- (1) both the positions of Signal Foreman and Signal Inspector " * * * will not be subject to rules of Article II of this Agreement", and
- (2) the terms and conditions attaching to the monthly rate prescribed for "Signal Foremen" and "Signal Inspector" in Article V, Section 1 of the Agreement are also identical.

Since monthly-rated Signal Foremen whose positions are, as indicated above, also not subject to the rules of Article II have, without complaint or claim, always been called and used whenever it was necessary to work the signal gang on a Saturday or for more than eight (8) hours on one of the Monday through Friday work days, there is obviously no possible support for the Employees' contention that a Signal Inspector is not subject to call simply because his position, like that of Signal Foremen, is also not subject to the rules of Article II. The inconsistency of the Employees' contention is obvious and is wholly without support under the agreement rules.

In conclusion, the Carrier respectfully asserts that since the Employees have not and cannot point to any agreement rule which requires the payment of additional compensation to a Signal Inspector such as the claimant Mr. Stevens when called and used on a Saturday, they have failed to meet their burden of proof of an agreement violation and their claim in behalf of Mr. Stevens in the instant dispute is therefore wholly without support under the agreement rules and should be denied for the reasons previously set forth herein.

OPINION OF BOARD: The basic issue in this dispute is the same as that in Award 12637, viz: was the Claimant, a Signal Inspector, entitled to

receive extra compensation in addition to his regular monthly rate when he was called to perform the work and duties of a Signal Maintainer. For the reasons stated in that Award, this claim will also be 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 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 Carrier did not violate the Agreement.

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.