

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Arnold Zack, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**HUDSON RAPID TUBES CORPORATION**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson Rapid Tubes that:

(a) The Carrier violated the current Signalmen's Agreement when it blanked the first trick Signal Repairman's position at Hoboken, New Jersey, in whole and/or in part on November 3, 4 and 5, 1957. The position blanked on the above enumerated dates is a seven-day position.

(b) The Carrier be required to compensate Signal Repairman J. P. Tinney, who was ready, willing and able to fill the position during the hours it was blanked, at the overtime rate of pay for the following hours on the following dates: 8:00 A. M. to 4:00 P. M. on November 3, 1957 - eight (8) hours; 12:00 Noon to 4:00 P. M. on November 4, 1957 - four (4) hours; and 12:00 Noon to 4:00 P. M. on November 5, 1957 - four (4) hours. (Time Claim No. 99)

**EMPLOYEES' STATEMENT OF FACTS:** Signal Repairman D. Williams was regularly assigned to a position with headquarters at Hoboken, New Jersey, with regular assigned hours from 8:00 A. M. to 4:00 P. M. with rest day of Friday and Saturday. The Carrier's signal facilities at Hoboken are protected by seven-day, around-the-clock maintenance forces, of which the position in question is a part.

On October 30, 1957, Mr. Williams reported off duty and the Carrier filled his position on that date by using the second and third trick Signal Repairmen for four hours each. The Carrier utilized the same procedure on October 31, 1957, to fill the vacancy. November 1 and 2, 1957, were regular rest days of Mr. Williams and the relief employe worked these dates. On November 3, 1957, the Carrier blanked the position in its entirety. On November 4 and 5, 1957, the Carrier worked the third trick Signal Repairman on the vacancy from 8:00 A. M. to 12:00 Noon and blanked the position on these dates from 12:00 Noon to 4:00 A. M. on November 6 and 7, 1957, the position was filled by using the third trick Signal Repairman for four hours

' . . . the fact of not filling such positions on scattered days is not an indication that they are not bona fide six or seven-day positions, that is, where the blanking is not due to an affirmative act of the Carrier but because of the employe's failure to report for duty. . . . The foregoing indicates that it is implicit in the Forty-Hour Week Agreement that the Carrier of its own motion may not blank established six and seven-day positions of the nature here involved when the regularly assigned occupant and the relief report for duty. To go further and say that where such employes do not report for duty, Carrier must work other regularly assigned employes or relief men either on rest days or by doubling over on an overtime basis, in our opinion, would be legislating for the parties. . . .'

We think this Award clearly explains the rights and obligations of the parties with respect to blanking under the 40-Hour Agreement; and, when they are applied to the facts in the present case, the alleged violation of the Agreement cannot be upheld.

Accordingly, both parts of the claim are not valid."

In view of the above, it is submitted that there is no basis for the claim. In any event, the claim, if allowed, can provide for reparation only at the pro rata rate. Penalty pay for time lost is not paid at the time and one-half rate. See Award 6853.

**CONCLUSION:** Carrier submits that employes' claim is without merit and should be denied.

**OPINION OF BOARD:** Signal Repairman D. Williams was regularly assigned to tour B-5, first trick, at Hoboken, New Jersey, Sunday through Thursday, 8:00 A. M. to 4:00 P. M. This is a seven-day a week, around-the-clock position. On Wednesday, October 30, 1957 Williams reported off sick. That day and the following day, October 31, 1957, the Carrier filled his position by using second and third trick Signal Repairmen for four hours overtime each. Friday and Saturday, November 1 and 2, were the employe's rest days, and his regular relief worked in his position. On Sunday, November 3, the position was not filled. On Monday and Tuesday, November 4 and 5, it was worked for the first four hours by the third trick Signal Repairman who held over. The position was not filled from Noon to 4:00 P. M. on either of these days. On Wednesday and Thursday, November 6 and 7, it was worked by the second and third trick Signal Repairman for four hours each daily. The next two days were Williams' regular days off, and he resumed work on Sunday, November 10, 1957.

The Organization filed the instant claim contending that the Carrier was prohibited from blanking the Signal Repairman's position for 8 hours on November 3 and for 4 hours daily on November 4 and 5. It argues that once the Carrier had designated this position as a seven day three shift operation under Rule 11 (a), it was required to fill it for each 8 hour period under Rules 8 and 18 and the prior awards of this Board, particularly in view of its prior knowledge of the employe's absence. Accordingly, the Organization requests compensation to the Claimant at the overtime rate in accordance with the terms of Rule 16 (b) and the parties' July 5, 1960, Memorandum of Understanding.

The Carrier denies that the parties' Agreement requires it to fill any temporary vacancy. It contends that the filling of temporary vacancies is a management prerogative, particularly where, as here, the employe absented himself from work because of illness, and cites supporting awards of this Board. Finally, it denies the relevancy to this dispute of the 1960 Memorandum of Understanding which was concluded subsequent to the events in dispute and has no retroactive effect.

After a careful reading of the relevant provisions of the Agreement and the precedents of this Board cited by the parties, we are convinced that the Carrier did not violate its obligations by failing to man the disputed job on the three days in question.

We are confronted with a fact situation stemming from absence due to illness, not from an attempt instigated by the Carrier to evade his obligations to fully man around-the-clock positions.

Referee Leiserson, reasoning in Award No. 6691 with a 40-Hour Agreement similar to that in the case under consideration, held:

"There is no rule in the 40 Hour provisions of the Agreement which prohibits blanking a position when the occupant is absent because of illness. . . . To the extent that there were Awards of this Division which ruled that positions could not be blanked because they were necessary to continuous operation, such rulings are not applicable under the 40-Hour Agreement."

He went on to quote the following excerpt from Award 5589:

". . . the fact of not filling such positions on scattered days is not an indication that they are not bona fide six or seven-day positions, that is, where the blanking is not due to an affirmative act of the Carrier, but because of the employe's failure to report for duty. . . . The foregoing indicates that it is implicit in the 40-Hour Week Agreement that the Carrier of its own motion may not blank established six and seven-day positions of the nature here involved when the regularly assigned occupant and the relief report for duty. To go further and say that where such employes do not report for duty, Carrier must work other regularly assigned employes or relief men either on rest days or by doubling over on an overtime basis, in our opinion, would be legislating for the parties. . . ."

In Award 5590 this Board held (Referee Robinson)

"There is no requirement under the 40-hour week agreement that positions as such, that is an individual job assignments, (sic) have to be filled every day. Guarantees run to the employe rather than the position under the 40-hour week agreement."

Again in Award 7591 (Referee Larkin)

"Only regularly assigned employes are guaranteed the forty hours per week. If one elects to absent himself for personal reasons, it is for the Management to determine whether a full complement of employes is required at the time of the absence of the excused employe."

In view of the foregoing Awards it is clear that the Carrier in the instant case has not violated the parties' Agreement. The specific Agreement provisions cited, namely, Rules 8, 11 (a), 15 (d), 16 (b), 18 and 47 (a), while relevant individually and collectively in assuring continuity of employment on positions such as this during normal operations, do not require the Carrier to completely fill positions created by absence due to illness as in the instant case. Nor does the parties' 1960 Memorandum of Understanding require such complete filling of blanked positions. The Memorandum was signed with awareness of the instant dispute, but it neither includes settlement of it by specific reference, or by any general provision for retroactivity.

**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 14th day of December 1964.