Award No. 13516
Docket No. SG-13364

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
(System Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Spokane, Portland and Seattle Railway Company that:

(a) The Carrier violated the Signalmen's Agreement when it refused to compensate Signal Maintainer C. W. Coleman at the time and one-half rate of pay for service performed on the adjacent Signal Maintainer's district on September 4, 1960, Claimant's regular stand-by day.

(b) The Carrier be required to compensate Signal Maintainer C. W. Coleman at the overtime rate of pay for two and one-half (2½) hours, in addition to his regular monthly rate, account of performing work on the adjacent Signal Maintainer's district on September 4, 1960. The date in question was a regular rest day of the adjacent Signal Maintainer and a regular stand-by day for the Claimant. [Carrier's File: 852-a]

EMPLOYES' STATEMENT OF FACTS: On July 8, 1948, General Chairman Gard and Vice President M. S. Mason met with the Carrier for the purpose of changing the rules necessary to put the 40-Hour Week Agreement into effect. At that time the Carrier felt that it needed seven-day protection and proposed that it be permitted to stagger its Signal Maintainers' work weeks with one Maintainer working Monday through Friday and the adjoining Maintainer working Tuesday through Saturday. The Carrier also proposed that these Maintainers would be required to stand-by for emergency service on alternating Sundays.

As a result of this Carrier request, a Memorandum of Agreement—sometimes referred to by the parties as a Letter Agreement dated July 8, 1949, was negotiated which permitted the Carrier to establish positions as follows for its Signal Maintainers:

fore being that on that one day he is responsible, without additional compensation, for two districts — his own and his neighbor's; and because of that responsibility he must accept emergency calls on either or both districts on that day.

For all of the other days of the month (excluding the three "without call" rest days each two weeks) only eight hours' pay is allocated, so the parties agreed in the penultimate paragraph of the July 8, 1949 letter, with respect to the two "work (on call)" days in each two-week cycle, that:

> "**on days maintainers are working on their own district** and are called to work on district adjacent to their own they will be paid pro rata rate for hours actually worked on such district during regular working hours on their own district, such payment to be in addition to the monthly rate." (Emphasis ours.)

It will be seen that by this staggered work week arrangement, each signal maintainer has, in each cycle of two calendar weeks:

(a) ten work days, two of which coincide with rest days of his neighbor and on which he protects emergency calls on the "adjacent district", with additional compensation;

(b) three rest days on which he is not subject to call;

(c) one rest day on which he is subject to call on two districts, his own and the "adjacent district", without additional compensation.

No dispute exists with respect to (a) or (b). The issue here is whether or not a monthly rated signal maintainer who is called to make emergency repairs on the "adjacent district" on the rest day described in (c) is entitled to additional compensation over and above his monthly rate which already includes sixteen hours' pay for this "on call" rest day which occurs once in each two-week cycle.

In conclusion, it will be noted that although the monthly rate of signal maintainers comprehends 211 hours' service — or 211 hours' pay anyway — (which is the equivalent of having one rest day per week); actually on this property, as result of letter agreement (Respondent's Exhibit B), which provides three rest days (without call) and one rest day (on call) in each two-week period, each maintainer normally works only 174 hours for his 211 hours' pay. The exception to this normal work month is the occasional emergency call on his "rest day (on call)" which occurs once every two weeks.

Respondent submits that this claim is entirely without support under the controlling signalmen's agreement on this property and must, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns an agreement entitled "Memorandum of Agreement" and dated July 8, 1949. Apparently this agreement was negotiated for the purpose of changing the Agreement Rules to comply with the "40-Hour Week Agreement."

"MEMORANDUM OF AGREEMENT

It is further understood that on days maintainers are working on their own district and are called to work on district adjacent to their own they will be paid pro rata rate for hours actually worked on such district during regular working hours on their own district, such payment to be in addition to the monthly rate. Payment for hours worked on such adjacent district outside of regular hours on their own district will be paid for under Rule 17."

Our task is to determine the intent of the parties at the time of the agreement.

The Petitioner contends that the last sentence of the agreement includes hours worked on an adjacent district on the subject to call day. The Carrier contends that the first sentence of the agreement qualifies the entire provisions.

This agreement was entered into in 1949. There is no evidence in the record regarding the interpretation the parties have given this agreement for the past eleven years. If the parties had agreed on an interpretation of this issue for eleven years, the question would be moot. The parties would be in accord and no ambiguity would exist.

In the absence of such evidence, we can only determine that the last sentence of the agreement is qualified by the preceding statements. The use of the word "such" in the last sentence is evidence that the last sentence reflects back to the preceding and not an independent clause as the Petitioner contends. Therefore, the Claimant is not entitled to pay for service on his regular standby day.

There is no question but that the maintainers obtained some benefit from the agreement. (i.e. not having to stand by every week.)

We find no violation of the agreement.

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 29th day of April 1965.

DISSENT TO AWARD NO. 13516, DOCKET SG-13364

Award No. 13516, Docket SG-13364, correctly singles out the penultimate paragraph of the letter agreement between the parties dated July 8, 1949, as determinative of the issue. This paragraph concerns only one issue: How shall Maintainers be paid when working on an adjacent district? This is divided into two categories:

1) How shall they be paid when working on an adjacent district during their regular work hours?

2) How shall they be paid when working on such adjacent district outside of regular work hours?

Category 1) is clear and not involved in this dispute. Category 2), the subject here, is equally clear and quite simply states that payment will be made under Rule 17.

The award overlooks these simple, unambiguous facts by stating:

> ". . . The use of the word 'such' in the last sentence is evidence that the last sentence reflects back to the preceding and not an independent clause as the Petitioner contends. Therefore, the Claimant is not entitled to pay for service on his regular standby day."

We agree that the word "such" does indeed refer back to the first sentence of the paragraph, but only to the extent that it indicates that in both instances work is being performed "on district adjacent to their own"; it does not detract from the obvious fact that in one instance (covered by the first sentence) work is being performed on the adjacent district during regular work hours of the Maintainer's own district, for which he will receive additional pay as set out, and that in the second instance (covered by the second sentence) work is being performed on the adjacent district outside of regular work hours on the Maintainer's own district, for which he will be paid under Agreement Rule 17.

The Majority's Award has the effect of rewriting the Agreement and setting up a ridiculous situation never intended by the parties. In Award No. 11908 we said:

> "An Award is no stronger than the reasoning and authority behind it."

Award No. 13516 is clearly in error; therefore, I dissent.

W. W. Altus
For Labor Members
May 7, 1965