Award No. 13837
Docket No. SG-12038

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Wabash Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 22, when it failed to compensate Signalmen W. L. Hall, C. A. Barnett, Stanley Vitek, R. L. Rumple, Assistant Signalman J. W. Sumpter, and Signal Helpers W. E. Blackwell and R. D. Morse, for the time from 7:00 P. M. until midnight January 22, 1959, during which time the bunk cars to which these employes had been regularly assigned were not available, these bunk cars being their headquarters, or home station.

(b) The Carrier should now be required to compensate Signalmen W. L. Hall, C. A. Barnett, Stanley Vitek, R. L. Rumple, Assistant Signalman J. W. Sumpter, and Signal Helpers W. E. Blackwell and R. D. Morse for five (5) hours at their respective overtime rates of pay on January 22, 1959, because of the above violation. [Carrier's File: 116.2]

EMPLOYES' STATEMENT OF FACTS: Prior to the time this dispute arose, a Signal Gang under the direction of Foreman J. W. Sharp was stationed at Mansfield, Illinois, with headquarters in outfit cars.

On January 21, 1959, due to a sleet storm, the gang employes were sent from their outfit cars to make emergency line repairs. They spent the night in Monticello, Illinois, away from their outfit cars. On the morning of January 22, 1959, they boarded a work train at Bement, Illinois, and worked therefrom until about 7 P. M., at which time the work train arrived at Decatur, Illinois.

In the meantime, the outfit cars were being moved to Decatur.

Upon arriving at Decatur on the work train, the employes were advised to eat and that the outfit cars would arrive later. After the outfit cars

Hotel accommodations were available at Decatur, Illinois on the night in question. As a matter of fact, Signal Helper N. E. Ray, one of the men in Mr. Sharp's gang, but not a claimant in this alleged dispute, took lodging for the night at the Railroad Y.M.C.A. at Decatur, and the Committee has not previously contended that hotel accommodations were not available at Decatur on the night in question.

It is also pertinent to point out that there was no misunderstanding among the men that they were released as a number of the signalmen and communication men working from the wire train with the claimants immediately dispersed at 7:00 P. M., going to their homes at Decatur, after being told when and where to report the next day.

The presentation of this claim to this Division is an attempt to gain compensation for the claimants beyond the time they were released from duty at Decatur at 7:00 P. M. on January 22, 1959, regardless of the fact that their outfit cars had not yet arrived or not yet been spotted at Decatur so that the claimants could occupy them and regardless of the fact that the claimants were permitted to obtain lodging at Decatur for which expense they would have been reimbursed.

This claim is presented to this Division regardless of the fact that the men were told that their outfit cars could not be spotted at the old roundhouse area at Decatur until after 9:30 P. M.; regardless of the fact that they knew it would take possibly one or two hours to heat the cars after spotting; regardless of the fact that the last paragraph of Rule 24 provides that:

> "When hotel accommodations are available at point to which sent, no time will be allowed other than that consumed in traveling on trains, waiting for trains, or time actually worked, between the end of the regular working hours of one day and the beginning of the regular hours of the following day."

and regardless of the fact that the employes chose to wait for their outfit cars, rather than to take lodging in hotels, as they were permitted to do.

Attention also is called to the fact that this claim is presented to this Division irrespective of the fact that no rule in the signalmen's agreement required the Carrier to forward the claimants' outfit cars from Mansfield to Decatur on the date in question and that the Carrier moved them to the latter location solely in the interest of the men on the first available train, but could not immediately spot them for occupancy at a convenient location at Decatur due to operating conditions then existing.

The alleged claims presented in the Committee's ex parte Statement of Claim are not supported by the rules of the agreement and should be dismissed, and if not dismissed, then denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the handling of the dispute on the property and in its submission to this Board the Carrier took the position that the claim had not been handled in accordance with the requirements of Article V of the Agreement of August 21, 1954. That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Nonoperating Employee Agree-

ments. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 6):

"FINDINGS: (Art. V) The only issue under Article V of the August 21, 1954 Agreement which remains pending in the light of the submissions and rebuttals of the railroad and the employes is whether the claim on behalf of 'R. L. Rumple' is barred.

"It appears from the submissions mentioned that two individuals by the name of Rumple were Wabash Signal Department employees: R. L. Rumple was working elsewhere as of the date involved in the claim, and N. L. Rumple was a member of the gang involved in the claim. N. L. Rumple submitted a time slip in relation to the occasion involved, but his name was not initially included in the handling by the general chairman. During the course of such handling, however, the general chairman included the name of R. L. Rumple. Subsequent correspondence from the top officer of the carrier pointed out that R. L. Rumple was not a member of the gang involved on the date involved in the claim. Subsequently it developed that N. L. Rumple had, as above stated, filed claim.

"The National Disputes Committee rules that claimant N. L. Rumple had been identified in the claim which he had initially presented in writing, in view of which the fact that the claim as submitted to the Third Division included instead the name of R. L. Rumple cannot be held to bar the claim of N. L. Rumple.

"DECISION: The claim of N. L. Rumple is not barred under Article V of the August 21, 1954 Agreement.

"This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket, including the claim of N. L. Rumple, is returned to the Third Division, N.R.A.B., for disposition in accordance with Paragraph 8 of the memorandum Agreement of May 31, 1963."

Claimants here were members of a signal gang and were housed in outfit cars constituting their "home station" under Rule 21 of the agreement.

On January 21, 1959, the outfit cars were located at Mansfield, Illinois, but the claimants were sent out of that point to perform emergency repair work between Lodge and Monticello, Illinois. At the conclusion of their day's work on January 21, claimants were not returned to their home station — the outfit cars — but were housed in a hotel at Monticello.

On January 22, 1959, Claimants worked out of Monticello on a wire (work) train until about 6:50 P. M. when the train arrived at Decatur. Claimants' outfit cars were moved there from Mansfield and arrived about 7:00 P. M. but were not made ready for occupancy until 11:00 P. M., according to the Carrier, and not until 12:00 Midnight, according to the Employes.

The dispositive question here is one of fact — whether Claimants were released from duty at 6:50 P. M. on January 22, 1959. The Carrier asserts they were released at that time and were instructed to report for work on January 23 at 6:00 A. M. The Employes deny Claimants were so released and assert that in the absence of specific instructions to that effect the claimants properly assumed they were held on duty until their outfit cars were available for occupancy.

While neither party offered what could be said to be convincing evidence in support of its position on the foregoing issue, nevertheless, the record does show that at no time before or after 6:50 P. M. on January 22, 1959, did the Carrier specifically state to the Claimants that they were released from duty. This omission on Carrier's part when taken together with its advice to the claimants that their outfit cars would not be available "until after 9:30 A. M." would appear to justify the claimants' belief that they were not released but remained on duty until their outfit cars, the "home station", became available for occupancy. Viewed in its most favorable light, the evidence relied upon to show the men were, in fact, released from duty is insufficient to support what amounts to an affirmative defense by the Carrier with its accompanying burden of proof.

Rule 22 provides, **inter alia,** that hourly-rated employes, such as claimants here, performing service requiring them to leave and return to home station daily will be paid straight time for "waiting". Claimants waited at least from 7:00 P. M. to 11:00 P. M. on January 22, 1959. They should, therefore, be compensated in accordance with the rule. They are not entitled to overtime, as claimed, because Rule 23 requires the performance of work to entitle an employe to pay at the overtime rate. These claimants did no work during the waiting period.

The fact that the claim, as presented and progressed, seeks compensation for claimants at the overtime rate is no bar to the Board's mitigating the damages sought by ordering payment at the straight time rate in accordance with the applicable and controlling rule. This does not constitute amending the substance of the claim which would be an improper act. It is no longer open to question that this Board may mitigate damages claimed where, as here, a controlling rule of the agreement requires us so to do.

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 violated.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1965.