

Award No. 14324

Docket No. SG-11669

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York, New Haven and Hartford Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it directed Assistant Signal Maintainer John Flannery to fill the position of a vacationing Signal Maintainer and refused to compensate him at the time and one-half rate for service performed on his regular assigned rest days of Saturday, September 13, 1958, and Sunday, September 14, 1958; the Carrier further violated the current Signalmen's Agreement when it directed Assistant Signal Maintainer John Flannery to suspend work on Thursday, September 11, 1958, a regular work day of his bulletined assignment.

(b) The Carrier therefore be required to compensate Assistant Signal Maintainer John Flannery at the time and one-half rate of a Signal Maintainer for service performed on Saturday, September 13, 1958, and Sunday, September 14, 1958, and for eight (8) hours at his Assistant Signal Maintainer rate of pay for Thursday, September 11, 1958. (Carrier's File: Railroad Docket 8051)

EMPLOYEES' STATEMENT OF FACTS: Mr. John Flannery was regularly assigned to the position of Assistant Signal Maintainer at SS-22, New Rochelle Junction, assigned hours from 7:00 A.M. to 3:00 P.M., Monday through Friday work week, with Saturday and Sunday as rest days.

Assistant Maintainer Flannery rendered service on his regular assignment during the week of September 1, 1958, and observed his regular rest days on Saturday, September 6, 1958, and Sunday, September 7, 1958.

Assistant Maintainer Flannery was directed by his Signal Supervisor to cover the assignment of Signal Maintainer McHale, who was on vacation from Monday, September 8, 1958, to and including Sunday, September 14, 1958. Signal Maintainer McHale's regular assignment is from Friday through Tuesday, with rest days of Wednesday and Thursday.

Assistant Maintainer Flannery worked Signal Maintainer McHale's assignment on Monday, September 8, 1958, Tuesday, September 9, 1958, Wednesday, September 10, 1958; was required to lay off on Thursday, September 11, 1958, and observed a rest day of McHale's position; worked Friday, September 12, 1958, Saturday, September 13, 1958, and Sunday, September 14, 1958.

There is an agreement in effect between the parties to this dispute, bearing an effective date of September 1, 1949, as amended, which is by reference thereto made a part of the record in this dispute.

CARRIER'S STATEMENT OF FACTS: The instant case arises out of the payment accorded Assistant Signal Maintainer John Flannery while covering in place of Signal Maintainer J. J. McHale, who was absent on vacation.

Assistant Signal Maintainer John Flannery, the claimant in this case, held regular assignment as Assistant Signal Maintainer at SS-22, New Rochelle Junction, hourly rate of \$2.36, 7:00 A.M. - 3:00 P.M., Monday to Friday inclusive, Saturday and Sunday being the regular relief days on this position.

Mr. Flannery was assigned to cover as vacation relief during the period September 8-14, 1958, inclusive, in place of Signal Maintainer J. J. McHale who held regular Maintainer position at SS-22, New Rochelle Junction, hourly rate of \$2.48, 7:00 A.M. - 3:00 P.M., Friday through Tuesday with Wednesday and Thursday as relief days. Claimant Flannery covered as follows in place of Maintainer McHale:

September 1958	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
(W - Worked)	8	9	10	11	12	13	14
(R - Relief)	W	W	R	R	W	W	W

Mr. Flannery, although regularly assigned as an Assistant Maintainer, holds seniority as a Signal Maintainer. He was the senior qualified and available employe and was therefore used in place of vacationing Maintainer McHale. He was paid the higher rate of pay while covering this position.

Claim was timely submitted by the Brotherhood on behalf of Assistant Maintainer Flannery for:

1. Time and one-half compensation at Maintainer's rate for Saturday and Sunday, September 13 and 14, 1958, respectively, account required to work on the regularly assigned rest days of his (Flannery's) position.
2. One straight day's pay at Assistant Maintainer's rate for Thursday, September 11, 1958, account held off his regular assignment.

Under date of November 12, 1958, General Chairman William Gallagher appealed to Carrier's Vice President, Labor Relations and Personnel, the highest officer designated to handle appeals on this property. Copy of this appeal of November 12, 1958, is attached as Carrier's Exhibit "A." The claim was denied by Carrier's Vice President, Labor Relations and Personnel, under date of January 2, 1959, copy of this decision is attached as Carrier's Exhibit "B."

Copy of Agreement effective September 1, 1949, as amended, between this Carrier and the Brotherhood of Railroad Signalmen is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced)

OPINION OF BOARD: The issue to be adjudicated is whether a regularly assigned employe retains his former workweek when he is performing vacation relief service on another position.

Claimant held regular assignment as Assistant Signal Maintainer at SS-22, New Rochelle Junction, hourly rate of \$2.36, 7:00 A.M. - 3:00 P.M., Monday

through Friday, rest days Saturday and Sunday. He was assigned from Monday, September 8, through Sunday, September 14 as vacation relief on a higher rated Signal Maintainer position at the same location with the same hours of work. The workweek of the Signal Maintainer position was Friday through Tuesday, rest days Wednesday and Thursday.

For clarity we show the days Claimant worked on the relief assignment compared to the workdays of his regular assignment in the same period:

Date	Day	Worked Relief	Work Days
			Regular Assignment
9/8	Monday	W	W
9/9	Tuesday	W	W
9/10	Wednesday	*	W
9/11	Thursday	R	W
9/12	Friday	W	W
9/13	Saturday	W	R
9/14	Sunday	W	R

The record is not clear whether Claimant worked or rested on Wednesday, September 10; but, it is not material to consideration of the Claim as presented.

Signalmen contend that Claimant should have been permitted to work his regular assigned position on the Thursday rest day of the relief assignment; and, for this it prays that we award Claimant 8 hours pay at the straight time rate. Further, Signalmen contend that for the work performed on Saturday and Sunday on the relief assignment, Claimant should be compensated at the time and one-half rate because those days were rest days of his regular assignment.

From the facts or record; our study of the Vacation Agreement and Interpretations relative thereto; and, Awards cited by the parties, we find: (1) Claimant was properly assigned to the vacation relief position; (2) while on the relief position Claimant assumed all the conditions of that higher rated position, including the hours assigned, rest days and rate of pay; and, (3) during the period of the vacation relief assignment, Claimant had no contractual right to work on his regular assignment although he continued vested with ownership thereof.

It is to be noted that the hours of work, on a working day, were the same for both Claimant's regularly assigned position and the one he was assigned to as vacation relief. Supposing, *arguendo*, the hours on one position were from 6:00 A.M. to 2:00 P.M. and on the other from 3:00 P.M. to 11:00 P.M., the interpretation and application of the Agreement urged by Signalmen would give Claimant a contractual right to work both positions. In the light of the prescriptions and objectives of the Vacation Agreement and Rule 13-A — The Forty Hour Week of the basic Agreement, such an interpretation is untenable.

We will deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 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 20th day of April 1966.

Dissent to Award 14324, Docket SG-11669

The Majority, consisting of the Referee and the Carrier Members, have in this Award nullified the conditions attached to Claimant's regular assignment, one that was his by virtue of his seniority, even in the face of their admission that "he continued vested with ownership thereof".

As for their supposition, *arguendo*, there will be time enough to deal with that situation when it is properly before the Division. It was not present in this case.

This Award not only ignores the intent of the rules, it is impractical and absurd.

/s/ G. Orndorff
G. Orndorff
Labor Member