

Award No. 14640
Docket No. SG-13742

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
READING COMPANY**

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

(a) The Carrier violated the current Signalmen's Agreement particularly Article 7(a) of the Vacation Agreement of December 17, 1941, as amended, when it failed and/or refused to compensate Signal Maintainer C. S. Freed the daily compensation paid to the Relief Signal Maintainer while Mr. Freed was on vacation the week of June 12, 1961.

(b) The Carrier should now be required to compensate Mr. Freed for one (1) hour overtime pay for each day he was on vacation from June 12 to 16, inclusive, 1961.

EMPLOYEES' STATEMENT OF FACTS: Beginning on or about May 31, 1961, the surfacing of track by the Maintenance of Way Departments made it necessary for the Signal Maintainer to regularly work nine hours each day in order to arrange proper signal indication in accordance with written instructions issued by the Carrier.

Claimant Freed is a Signal Maintainer. His assigned working hours are from 7:30 A. M. to 4:00 P. M., with a thirty minute lunch period. His assigned work week is Monday through Friday.

Under date of May 29, 1961, Mr. O. S. Penman, Supervisor of Signals, gave the following instructions to Claimant Freed:

"General Order No. 57 effective 5:45 A. M. until 3:30 P. M., May 31st, calls for signals 203 and 208 being set at approach from 7:30 A. M. to 3:30 P. M. They are going to surface track between 28th Street Junction and Wissahickon. This is for one (1) day only. Starting June 1st they are going to work between Wissahickon and Manayunk which will call for signals 207 and 212 to be set at approach. Watch for General Order as for time."

Claimant Freed set signals 203 and 208 at approach May 31, 1961, working one (1) hour overtime at the end of his tour of duty to place the signals back to normal operation. He had previously set these signals at approach on May

1961 to June 16, 1961, inclusive, and as a part of his duties was required to actuate Block Signals No. 209 and No. 216 to display approach indication prior to 8:01 A. M. and again restore them to normal indication after 2:59 P. M. to comply with provisions of General Order No. 63, which resulted in his making one hour overtime.

Claim was presented and progressed by the Brotherhood of Railroad Signalmen for payment of one hour overtime in behalf of the claimant for each day he was on vacation June 12, 1961 to June 16, 1961, inclusive, based on the contention that Article 7 (a) of Vacation Agreement effective December 17, 1941 was violated, which claim and contention Carrier denied.

Agreement between Reading Company and Brotherhood of Railroad Signalmen, effective August 1, 1953, is on file with the Board and is, by reference, made a part of this submission.

OPINION OF BOARD: Claimant C. S. Freed seeks to be paid for one hour overtime for each day he was on vacation: June 12, 13, 14, 15 and 16, 1961. He had worked one hour overtime on the immediately preceding May 31, June 1, 2, 5, 6, 7, 8, and 9. He returned from vacation and continued to work one hour overtime each day he worked — on June 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30 and on July 5, 6 and 7. While he was on vacation he was relieved by Albert Mauer who worked one hour overtime each day he worked: June 12, 13, 14, 15 and 16. Mauer, of course, drew overtime pay for the daily hour.

All of the overtime work was necessary to afford proper signal indication to protect the surfacing of track by the Maintenance of Way Department, this latter work having been routinely scheduled and executed in the course of Carrier's business.

The claim is based on Article 7(a) of the Vacation Agreement of December 17, 1941. The interpretation of the article by the Agreement of June 10, 1942 is as follows:

"This contemplates that an employe having a regular assignment will not be any better or worse off while on vacation as to the daily compensation paid by the Carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing Carrier."

Carrier's defense is that the overtime worked herein involved was casual and unassigned. We reject this contention.

"Casual" has nuances of meaning, but we think the definition most nearly expressing the meaning intended by the Interpretation Committee is as follows: "happening without design, and without being expected; coming by chance."

In the instant case the work was clearly expected; the necessity of the work was not left to chance. Rather, it was vitally incident to the track improvement program which had been scheduled with care taken to co-ordinate the efforts of the various departments affected. As the work progressed, the signals that needed to be set varied, but always it was anticipated by Carrier that the track surfacing would move along and that two signals would be set to warn of the obstruction of the track.

Nor is this overtime work "unassigned." As stated in Award No. 5750 (Wenke):

"Unassigned means that the work is not part of an assignment. Unassigned overtime means overtime work which, although it may be regularly performed, has not been assigned to a position the occupant of which is performing it."

Starting with Mr. Penman's written order to Freed on May 29, the work was exclusively delegated to Freed and his relief. The extra work of setting the signals necessarily required overtime work; in no sense of the word can it be considered as "unassigned."

Our holding here is in no way inconsistent with that of Award 4498 (Carter) cited by both parties in support of their respective contentions. There the Board stated, "We think casual overtime . . . means overtime the duration of which depends upon contingency or chance, such as service requirements or unforeseen events." The work in question was neither occasioned by a service breakdown or an unforeseen event. Nor does further language in Award 4498 afford any support of Carrier's position. "Whether such overtime assumes a degree of regularity is not a controlling factor," the Board stated in Award 4498. With this we agree. Regularity is not the controlling test of whether or not overtime is casual. This is so because events which require overtime work may (in the words of our definition of "casual") happen without design, and without being expected, yet with some regularity. At the same time regularity of the work, as in the instant case, is an indication that its occurrence should not be unexpected.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.

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