Award No. 15872
Docket No. SG-15478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 16(c), 19(a), 25, 49 and the Supplemental Agreement of June 1, 1955.

(b) C. G. Garlington be paid for two and two-third (2⅔) hours on August 30, 1963; ten (10) hours on August 31, 1963; eight (8) hours on September 7, 1963; and eight (8) hours on September 14, 1963, account being held on duty away from home and required to perform work.

(c) C. G. Garlington be paid at the rate of his regular assignment at Relay Repairman for all time he was not permitted to work on his regular assigned position of Relay Repairman at Macon, Georgia, while required to suspend work on his regular bulletined assignment and fill another position at Phenix City, Alabama, as "Vacation Relief Maintainer," in direct violation of Rule 38(h), as amended.

[Carrier's File: SIG 475]

EMPLOYES' STATEMENT OF FACTS: This dispute arose because a Relay Repairman-Relief Maintainer was required from August 25, 1963, to September 15, 1963, to suspend work on his regular assignment at Macon, Georgia, and fill a Signal Maintainer position at Phenix City, Alabama, while the employe of that position was on vacation. During this period of time Relay Repairman C. G. Garlington performed no work on his regular assignment; he worked exclusively on the other job instead.

The applicable Agreement provides, and we will show it has been the practice, that vacation relief work is performed on this property by Assistant Signalmen or Helpers in the gang, or by furloughed men if there is no gang working. Inasmuch as Relay Repairman Garlington was neither an Assistant Signalman, Helper, nor furloughed employe and he was required to suspend work on his own assignment to perform the work which should have been assigned to others, claim on his behalf was instituted on September 19, 1963, in a letter addressed to Mr. W. M. Whitehurst, Superintendent Communications and Signals, by Mr. J. R. Estes, Jr., who was General Chairman at the time.

was no other way to provide vacation relief for the maintainer. While relieving the maintainer at Phenix City, Alabama, the Relay Repairman-Relief Maintainer was paid his regular monthly rate — which is higher than the maintainer rate — at per Rule 49(a) of the Agreement. The claimant was paid his actual necessary expenses.

It is a fact that Relay Repairmen-Relief Maintainers have performed vacation relief both prior to and since the June 1, 1955 supplemental agreement was signed, and upon which agreement the Brotherhood base their claim.

It is a further fact that there is no rule in the agreement to support any claim for double pay.

The Brotherhood has failed in all handlings on the property to cite a rule, interpretation or practice that supports what they are here demanding. Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the Carrier has denied this baseless claim at each and every stage of handling on the property. The claim has no semblance of merit.

The rules and working conditions agreement between the parties is effective July 1, 1950, as amended. Copies are on file with the Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: The Claim is as above shown and set forth. The Record is replete with assertions and denials, and, consequently, a narrative of the facts is difficult. Briefly, Claimant Garlington, a Relay Repairman stationed at Macon, Georgia, was required by the Carrier to perform relief work at Phenix City, Alabama, while the employe of that position (Signal Maintainer) was on vacation. Claimant Garlington is a monthly rated employe; his official job title is "Relay Repairman-Relief Maintainer"; and his work is not limited to the area in close proximity to Macon.

There is no dispute in regard to the fact that the regular employe at Phenix City was on a vacation to which he was legally entitled. Since he was paid his regular wages on this vacation, no "vacancy" existed. The man who was on vacation is not a grievant in reference to Carrier's handling of the situation which arose during his absence.

Relief work was needed at Phenix City, but the Brotherhood contends that it was a violation of the Agreement for the Carrier to use Claimant Garlington to perform it in addition to his other duties.

The Brotherhood states that Rule 38(h) of the Agreement provides that vacation relief work can be performed only by Assistant Signalmen or Helpers in the gang, or furloughed men if there is no gang working; and that if a Relay Repairman-Relief Maintainer is used for such work, a clear-cut contractual violation occurs — regardless of circumstances. This Board has recently held in a dispute involving the same parties that a Relay Repairman-Relief Maintainer is not precluded from performing vacation relief work. Award 14394. We are of the same opinion. There is much argumentation in the Record as to past-practice, and it is our belief that the probative evidence in this regard supports the position of the Carrier. However, it is not necessary to resolve this issue on the basis of past-practice. This neutral referee is not convinced that Rule 38(h) has been nullified by an established custom to the contrary. However, we do not interpret it as the Brotherhood does. We believe it is applicable if Assistant Signalmen or Helpers in the

gang, or furloughed men if there is no gang working, **are available and qualified to perform vacation relief work.** Availability and qualifications are implicit in the Rule. To construe the rule otherwise would be an unreasonable interpretation. Interpreting contracts, it is a cardinal rule of construction that a reasonable interpretation should prevail over an interpretation which leads to harsh and unjust consequences. In this case, the Record compels us to conclude that the Carrier did not by-pass any available, qualified employe in the categories designated in Rule 38(h) in order to provide work relief for an employe who was rightfully on vacation. This being the case, the action Carrier took was neither illegal or improper. Carrier should not be placed in the position of having to commit a breach of contract in taking any course of action available to it regardless of circumstances.

As to the pay claimed for the Claimant — whether overtime or punitive — we reaffirm Award 15543. This Award establishes guidelines for the payment of monthly rated employes on this property, including overtime. We do not find that Claimant Garlington was not paid compensation he should receive. He was paid travel expenses and his regular monthly salary.

If he worked overtime in any of the situations embraced by Award 15543, the Brotherhood did not present adequate probative evidence that such was the case. Mere assertions are not enough, especially when these are directly contradicted, e.g., it was both asserted and contradicted that Claimant did "emergency" work on the sixth day of his regular work week. It would be helpful to the Board if more probative evidence in regard to these matters was presented and exchanged on the property and there made a matter of record. As we held in Award 14394, the burden of proof test must be met by the petitioning Organization.

In the present case, we find insufficient evidence to show that the Claimant was underpaid.

As stated above, we do not find that Carrier has committed any breach of contract, and, therefore, this Claim should be denied.

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 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.

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