

Award No. 16435
Docket No. SG-15317

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

On behalf of Assistant Signalman J. L. Tarrant for the difference between his Assistant Signalman rate of pay and the Signalman rate of pay for May 6, 7, 8, 9, and 10, 1963; and on behalf of Assistant Signalman Eugene Haberman for the difference between his Assistant Signalman rate of pay and the Signalman rate of pay for May 13, 14, 15, 16, 17, 20, 21, 22 and 23, 1963; this to be paid them in addition to what they have already received as Assistant Signalmen.

[Carrier's File: L-130-286]

EMPLOYES' STATEMENT OF FACTS: Under date of September 9, 1954, the parties to this dispute signed a Memorandum of Agreement to provide for the establishment of signal maintainer positions at UD Tower, Joliet, Illinois, and 61st Street Tower, Chicago, Illinois, for vacation and other relief of signal maintainers on the Chicago Terminal District. A copy of that Memorandum of Agreement is attached hereto as Brotherhood's Exhibit No. 1

During the time involved in this dispute, Mr. R. M. Babb was the incumbent of the relief signal maintainer position at 61st Street Tower.

Signal Maintainer J. D. Oman was on vacation from May 6 to 24, inclusive, 1963. The only day during this vacation period on which Mr. Babb was permitted to provide the vacation relief service on Mr. Oman's territory was May 24, 1963. Other signal employees were required to work on Mr. Oman's territory on other days during this vacation period.

Under date of July 8, 1963, the Brotherhood's General Chairman initiated a claim [progressed separately under Brotherhood's File: NRAB-1523] on behalf of Mr. Babb for straight time pay for each day he was not permitted to work Mr. Oman's position during the latter's vacation period, which covered every work day of the vacation period except May 24, 1963, and is being progressed to this tribunal on the basis it is payable because of the Carrier's failure to properly deny same in accordance with the specific provisions of Article V of the August 21, 1954 Agreement.

6. On July 8, 1963, the Employees also filed claim in behalf of Assistant Signalman J. L. Tarrant on May 6, 7, 8, 9 and 10, 1963, and E. Haberman on May 13, 14, 15, 16, 17, 20, 21, 22 and 23, 1963, for difference between their respective rates of and rate of signalman based on contention that:

"These two assistant signalmen should have been used to fill the vacancy which would have been created had Babb been properly assigned to his vacation relief assignment starting May 6."

(See Carrier's Exhibit D-1.)

Further handling of this claim is shown by Carrier's Exhibits D-2 through D-7.

7. On June 29, 1963, the Employees filed a claim in behalf of Signal Maintainer R. M. Rizzuto, Blue Island, Illinois for

2	hours on May 10
1-1/2	hours on May 13
5-6/12	hours on May 14
7	hours on May 15
8	hours on May 20

all at punitive rate of pay in addition to what he had already been paid on the above dates account alleged violation of Rules 5, 14, 15, 59, 60 and seniority rules. (See Carrier's Exhibit E-1) Further handling of this claim is shown in Carrier's Exhibits E-2 through E-6.

(Exhibits not reproduced.)

OPINION OF BOARD: Three separate claims were filed with this Board by Petitioner arising out of the same sequence of events. Claimants in this separate claim are assistant signalmen, who Petitioner contends should have been used as relief signal maintainers on the position of Relief Signal Maintainer Babb if he had been used to fill another position of a vacationing employe during the period from May 6 to 24, 1963.

The first claim presented by Petitioner arising out of the same cause of action was on behalf of Relief Signal Maintainer Babb for an additional day at the straight-time rate for specified dates because he was not assigned to fill the position of the vacationing employe. The merits of this dispute were not considered by this Board as Petitioner progressed the claim to the Board solely on the basis that Carrier violated the provisions of Article V of the August 21, 1954 Agreement by failure to state any reason for denial of the claim.

The other claim presented was on behalf of a signal maintainer allegedly used by Carrier to fill the position of the vacationing employe on specified dates. This claim also was progressed to the Board solely on the basis that Carrier violated the provisions of Article V of the August 21, 1954 Agreement by failure to state any reason for denying the claim, and the merits of the dispute were not considered.

Both of these claims were sustained in our Awards 16293 and 16294 because of Carrier's failure to fulfill the requirement of Article V, Section

1(a) of the August 21, 1954 Agreement. However, such disposition did not involve consideration of the merits of either claim upon which this remaining claim is bottomed.

The instant claim presumes that Carrier violated the applicable Agreements by not assigning Relief Signal Maintainer Babb to the position of the vacationing employe during the specified dates of claim, but such determination was never reached in our Award 16293 as Petitioner elected to process that claim solely on the basis of a violation of Article V of the August 21, 1954 Agreement. Accordingly, we must conclude that Petitioner has failed to establish a fundamental premise necessary for proper adjudication of the instant dispute. Therefore, the claim must be dismissed.

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 Petitioner has failed to show that the Agreement was violated.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.