



Award No. 17204

Docket No. SG-17278

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company that:

(a) Carrier violates the current Signalmen's Agreement, as amended, particularly the Scope, Classification Rules, and Rule 14, when it uses Signal Maintainers from adjoining or adjacent sections to perform work in Tennessee Yard.

(b) Carrier be required to compensate the following Signal Maintainers, at their respective overtime rates of pay for the amounts of time shown, account violation on April 19, 1966; and continue to compensate Signal Maintainers at Tennessee Yard and those from adjoining territories being taken off their regular jobs and performing work on other jobs (this is done mostly in the yards by the adjoining maintainers when one or two of the maintainers assigned to Tennessee Yards are off duty:)

J. T. Vaughn—Memphis, Tenn., 5 hours.

J. B. Easter—Olive Branch, Miss., 4½ hours.

A. L. Malone—Tennessee Yard, 4½ hours.

(Carrier's File: D-4348)

EMPLOYES' STATEMENT OF FACTS: This dispute arose because Carrier failed and/or refused to call signal maintenance employees for work on their territory. Instead, Carrier called and used maintenance employees from other territories without making any attempt to call and use available men from the territory on which work was to be performed.

While this was initiated and handled as a continuous time claim (Article V of the August 21, 1954 Agreement provides, among other things, that a claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall be fully protected by the filing of one claim or grievance as long as such alleged violation, if found to be such, continues), the first date involved is April 19, 1966.

On April 19, 1966, Carrier called Signal Maintainer Vaughn from Memphis, Tennessee, and Signal Maintainer Easter from Olive Branch,

A. L. Malone, Signal Maintainer

7:30 A.M. to 3:30 P.M. (Friday, Saturday, Sunday) 3:30 P.M. to 11:30 P.M. (Monday and Tuesday) Wednesday and Thursday rest days, rate \$3.0288 per hour.

The Carrier has a signal maintainer position at Memphis assigned as follows:

E. Vaughn, Signal Maintainer

7:30 A.M. to 4:00 P.M., Monday through Friday, Saturday and Sunday rest days, rate \$3.0288 per hour.

The Carrier also has a signal maintainer position at Olive Branch, Mississippi which is the adjoining or abutting section:

J. B. Easter, Signal Maintainer

7:30 A.M. to 4:00 P.M., Monday through Friday, Saturday and Sunday rest days, rate \$3.0288 per hour.

It was necessary on April 19, 1966 to repair and overhaul the car retarder system at Tennessee Yard. The Carrier used Casada and Pauli along with Vaughn and Easter to perform the work. The work was performed during the regular working hours of 7:30 A.M. and 3:30 P.M. on Tuesday, April 19, 1966. (Exhibits not reproduced.)

OPINION OF BOARD: On April 19, 1966 it was necessary to repair a car retarder system at the Tennessee Yard of the Carrier. Carrier called Claimants Vaughn who has a signal maintainer position at Memphis and Claimant Easter who held a signal maintainer position at Olive Branch, Mississippi, to do the work. Claimants Noe and Malone were on the force at the Tennessee Yard that is maintained for the purpose of maintaining signal facilities and the car retarder system. Noe and Malone were not called to do the repair work. Noe has been dropped from the claim as he worked on the day in question.

The Organization alleges that the use of Vaughn and Easter was a violation of Rule 14 of the Agreement which reads as follows:

"Rule 14. Employees will not be required to suspend work during regular working hours to absorb overtime."

Malone's claim is based on the theory that he was entitled to the overtime.

The question of travelling from one seniority district to another does not enter into the case at hand. This is a matter of moving an employee from his position to aid in repair work at another point within the same seniority district.

The reasoning of Referee Dorsey in Award No. 16611 dealing with a suspension of work rule is applicable. Rule 32 (h) discussed therein is identical to Rule 14 herein. We quote from Award 16611 as follows:

"Clerks would have us insert into Rule 32 (h) the phrase within the parenthesis:

"Employees will not be required to suspend work (on their positions) during regular hours to absorb overtime."

"This we cannot do because: (1) this Board has no jurisdiction to add to or subtract from the provisions of the Agreement; (2) in the absence of substantial probative evidence of intent of the parties to the contrary, the words in a rule must be interpreted as communicating their usual common meaning.

"Rule 32(h) is addressed to a situation consisting of two factors: (1) an employee required 'to suspend work during regular hours;' and (2) the suspension of work during regular hours with the design of absorbing overtime; meaning, the holding out of service of an employee during his regular assigned hours to evade payment of the overtime rate penalties prescribed in the Forty Hour Week Agreement. Inasmuch as Clerks admit that Transferees were not required to suspend work during their regular hours it has failed to prove a violation of Rule 32(h)."

We will deny the claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1969.