



Award No. 17205

Docket No. SG-17060

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert A. Franden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAIL-
ROAD CO.**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company on behalf of Signal Maintainer L. K. West:

- (a) The Carrier violated the current Signalmen's Agreement when it deducted the amount of \$46.86 from his second-half-of-August pay check for work he had done in the first half of April, 1965.
- (b) Mr. West claimed time and one-half for the 7th and 12th days of April account change of shift, which is covered by our current Rule 27.
- (c) Mr. West also claimed time and one-half for April 10 and 11 for work in excess of 40 hours in one week, which is covered in the current Agreement by Rule 10 (g) (7).
- (d) Rule 84 provides that an employee who suffers loss because of violation of misapplication of any portion of the Signalmen's Agreement will be reimbursed by the Carrier.
- (e) We contend that Carrier did violate the current agreement as the above-mentioned rules clearly state. Also, it has been past practice of the Carrier to honor these rules, as the same issues have happened many times previously and they have always been honored.

The amount of \$46.86 should be reimbursed to Mr. West.

[Carrier's File: F-1048]

EMPLOYEES' STATEMENT OF FACTS: Claimant L. K. West is a Signal Maintainer on a position which was bulletined as having this assigned territory: "General Maintenance and relieving as assigned by Supervisor", with days off duty dependent upon relief assignments.

Claimant's paycheck for the first half of April, 1965, included overtime pay for change of shift and for work in excess of forty (40) hours in a

For the services rendered by Claimant West on the dates listed above he was overpaid, through error, eight hours at the overtime rate for services rendered on the dates of April 7, 10, 11 and 12, 1965 when he actually was only entitled to eight hours straight time on those dates.

An audit of the payrolls uncovered these overpayments made to Claimant West in his paycheck covering the first half of April 1965 and arrangements were made to recover the inadvertent overpayment from Claimant West's paycheck covering the last half of August 1965. Claimant West was notified on September 17, 1965 (Carrier's Exhibit "B").

Attached hereto are copies of the following as Carrier's Exhibits:

Letter written by General Chairman D. E. Twitchell to Spvr. Sigs. & Comm., Mr. L. B. Sandstrom under date of November 6, 1965. (Carrier's Exhibit "C").

Letter written by General Chairman D. E. Twitchell to Spvr. Sigs. & Comm., Mr. L. B. Sandstrom under date of December 5, 1965. (Carrier's Exhibit "D").

Letter written by Mr. L. B. Sandstrom to General Chairman D. E. Twitchell under date of December 23, 1965. (Carrier's Exhibit "E").

Letter written by Mr. L. B. Sandstrom to General Chairman D. E. Twitchell under date of December 28, 1965. (Carrier's Exhibit "F").

Letter written by Mr. S. W. Amour, Vice President-Labor Relations to General Chairman D. E. Twitchell under date of June 10, 1966. (Carrier's Exhibit "G").

Letter written by Mrs. S. W. Amour, Vice President-Labor Relations to General Chairman D. E. Twitchell under date of July 12, 1966. (Carrier's Exhibit "H").

(Exhibits not reproduced)

OPINION OF BOARD: Claimant West is a Signal Maintainer on a position which was bulletined as follows: "General Maintenance and relieving as assigned by Supervisor", with days off duty dependent upon relief assignments.

Carrier issued a paycheck to Claimant for the first half of April, 1965 including overtime for change of shift and for work in excess of forty (40) hours in a week. The Carrier advised Claimant that these payments were made erroneously and deducted \$46.86 (the amount of the overtime payment from the Claimant's last half of August paycheck). The Claimant demanded reimbursement.

Mr. West claims payment of the punitive rate for the days of April 7 and April 12 of 1965. Claimant worked from 7:00 A.M. to 4:00 P.M. on the 1st, 2nd, 5th and 6th (rest days 3rd and 4th) then worked from 3:00 P.M. to 11:00 P.M. on the 7th. He claimed the overtime rate of pay for the 7th on account of "change of shift" pay. He worked from 3:00 P.M. to 11:00 P.M. on the 8th, 9th, 10th, 11th and then returned to the 7:00 A.M. to 4:00 P.M. shift on the 12th. He claimed overtime rate of pay on the 12th again on

the basis of a change of shift. The claims for the 7th and 12th are based on Rule 27 which reads as follows:

"RULE 27. (a) Employees changed from one shift to another will be paid the overtime rates for the first shift of each change. Employees working two (2) shifts or more on a new shift shall be considered transferred. This will not apply when shifts are temporarily changed at the request of the employees involved.

"(b) Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Such assignments will be excepted from the requirements of the provisions of Paragraph (a) of this rule for penalty payments upon change of shifts for shift changes included in the regular relief assignments."

The Carrier argues that as it is undisputed that the reason Claimant changed shifts was to fill vacation vacancies on the 7th and 12, the Provisions of Article 12, Section (a) of the Agreement dated December 17, 1941 which reads as follows:

"Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof.

* * *"

The Carrier has cited Referee Wayne L. Morse interpretation of Article 12 (a), Section (a), which we believe to be clear and unambiguous and which we will follow. Said interpretation reads as follows:

"In the statement of their position on Article 12 (a) the carrier submitted the following illustrations:

"* * *"

'(b) A shop craft employee on the third shift is allowed a 6-day vacation. It is necessary to fill his position and an employee is transferred from the second shift. The transferred employee claims that schedule rules with respect to changing shifts and doubling over apply to filling vacation vacancies and claims time and one-half for the first shift he works in filling the vacationing employee's position, and time and one-half for the first shift he works upon return to his position. It is the carrier's position that these punitive payments are not required.'

"It is the referee's opinion that the carrier's position on this illustration is absolutely sound and within the meaning and intent of the vacation agreement. It is his view that under Article 12 (b) the vacancy created by an employee going on vacation does not constitute such a vacancy as to entitle a relief worker to punitive payments. The referee submits that the employees' position on this illustration is a good example of a strained and highly technical

interpretation of existing working rules. He is convinced that it was not the intent of the parties, nor is it reasonable to assume that they could have intended, that when a carrier grants an employee a vacation and his job is such that it must be filled with a relief worker, an additional cost of overtime pay must be incurred for the first shift."

Accordingly, we will deny the claim for April 7th and 12th as we hold that Article 12 (a) of the December 17, 1941 Agreement controls over Rule 27 of the Agreement.

Claimant claims overtime for the 10th and 11th on the sixth and seventh consecutive days of work under Rule 13 (e) of work under Rule 13 (e) of the Agreement which reads as follows:

"RULE 13(e) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 10. This rule does not apply to monthly rated employees."

We believe this part of the claim to be meritorious. The advertisement for Claimant's job lists the assigned territory as "General Maintenance and relieving as assigned by Supervisor" and the rest days as "dependent upon relief assignments." The successful bidding by the Claimant for this position does not deprive him of the benefits of Rule 13(e). Acting as a relief man is part of the job description of Claimant's regular permanent position. This is not the moving from one assignment to another that is contemplated by the exception in Rule 13 (e).

We will sustain the claim as to April 10th and 11th.

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.

A W A R D

Claim sustained in part and denied in part.

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.