

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21380
Docket Number SG-21323

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and its employees in the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective October 1, 1973, particularly Rule 16 which resulted in violation of Rule 72.

(b) In addition to violation of Rules 16 and 72 cited in Local Chairman's Claim, we believe that Rule 11 (Work Week) and Rule 19 were also violated.

(c) Mr. M. L. Burreson be reimbursed the amount of One Thousand Four Hundred and Eight Dollars and Eighty Nine Cents, the amount of loss suffered in accordance with provisions of Rule 72 of Current Agreement.

(Carrier's file: SIG 61-50)

OPINION OF BOARD: Carrier established a new position of Signal Maintainer with headquarters at Hayden, Arizona. Pending bulletining and permanent assignment of an applicant to this position, Claimant was sent from his home station of Tempe, Arizona (Signal Gang No. 9) to protect the new vacancy. He was assigned to Hayden on March 25, 1974 and returned to his permanent assignment on April 23, 1974. Claimant was given suitable eating and sleeping accommodations at Hayden and was allowed actual necessary expenses while on the temporary assignment. The assigned hours at Hayden were first trick with Saturday and Sunday as rest days. With certain exceptions (which are not in dispute) Claimant was instructed to remain available for emergency duty from the end of his regular shift on each Friday until the beginning of his regular shift on the following Monday. Carrier compensated Claimant at straight time for the weekends in question except that he received the overtime rate for service performed between 6:00 P.M. April 6 and 2:30 A.M. April 7th. The issue involved herein is whether Claimant qualified for the overtime rate for the weekend hours specified in the claim.

Rule 16 of the Agreement, relied on by Petitioner, is a standard overtime rule which provides, inter alia, for time and one-half to be paid for the sixth and seventh day of work in a week. Rules 19, 28 and 25 are also cited; they provide in pertinent part:

"RULE 19. SUBJECT TO CALL.

Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and shall notify the person designated by the Management where they may be called and shall respond promptly when called. When such employees desire to leave their headquarters for a period of time in excess of three (3) hours, they shall notify the person designated by the Management that they will be away, about when they shall return, and when possible, where they may be found. Unless registered absent, regular assigned employees shall be called."

"RULE 25 - HELD OUT OVERNIGHT

Employees sent away from home station and held out overnight shall be allowed actual time for traveling or waiting during the regular working hours; in addition, travel or waiting time outside of regular hours will be paid for at straight time rate, until the employee is released from duty at location where suitable eating and sleeping accommodations are available."

"RULE 28. (a) FILLING TEMPORARY VACANCY.

An employee when sent away from his home station to fill a temporary vacancy in his own or lower class for one day, shall be paid in accordance with Rule 24; if for more than one day he shall be paid in accordance with Rule 25. While filling such vacancy, he shall be paid for the hours worked at the established rate for the position, but at not less than his regular rate. If his regular position works in excess of eight (8) hours, he shall be paid not less than if he remained on his regular position."

Carrier contends that there is no rule in the Agreement under which signal maintainers are compensated during time they remain available and "subject to call" outside of their regular assigned hours, nor has it been the practice to do so. It is argued that "available-for-call" time is not time worked under Rule 16. Carrier claims that the situation in this case was covered by Rules 28(a) and 25. Carrier, in support of its straight time payment stated:

"In the instant case, in the context of Rule 25, the term 'duty' was interpreted to the benefit of the claimant as being sufficiently broad to encompass the requirement that claimant WAIT AT HIS MOTEL FOR A CALL, entitling him to payment of straight time rate."

Carrier also maintains that if Petitioner's position is correct, and Rule 25 is not applicable, then Claimant was paid for many hours for which he was entitled to no compensation. Either way, it is argued, since there was no time worked, the claim is invalid.

Petitioner states that Rule 25 is inapplicable since Claimant was released from duty on his first day at the temporary location with suitable eating and sleeping accommodations. It is argued that Rule 25 was not intended to cover the type of standby service Claimant performed during the weekends in question. Petitioner also urges that Claimant was denied the privilege of registering absent outside of assigned hours which is the normal prerogative of maintainers under Rule 19.

The issue in this dispute is not a novel one. The question of the distinction between "work" and "service" has been before this Board on numerous occasions in various contexts (e.g. Award 2032), and we have found both to be compensable. It is evident that Carrier construed the requisite standby time as service to be compensated in view of its straight time pay decision. We find, however, that there is a distinction to be made between waiting and traveling time and standby service as performed herein. The provisions of Rule 25 are not applicable to this situation since in that Rule the waiting time at straight time rate is only payable until "...the employe is released from duty at location where suitable eating and sleeping accommodations are available."

We have dealt with closely related disputes in Awards 826, 1675, 2640, 3290 and 4440. In Award 1675 we said:

"It is admitted by the Carrier that Ashford was definitely told by his superior officer on the evening of December 23rd that he would be subject to call and that he could not leave his home station. He was not released from being subject to call until 7:30 P.M., Sunday December 24th, 1939. Thus we find that Ashford was required to be ready for service during this period of time. It was stand-by service. It was of value to the Carrier or otherwise it would not have required Ashford to have been subject to call during this period of time. As someone has said 'They also serve who only stand and wait.'

Ashford performed a specific service for the Carrier and is entitled to be compensated for this service under the provisions of the current agreement for the 23½ hours' stand-by service....This payment is governed by the provisions of Rule 3 (L-1) stating that all service performed outside of the regular work period shall be paid on the basis of time and one-half."

Similarly, in the dispute before us we find that Claimant performed compensable service during the times specified in the Claim and should have been compensated in accordance with the terms of the Agreement: Rule 16. For all the reasons indicated the Claim must be sustained. However, the compensation due Claimant should only be the difference between what he received from Carrier and time and one-half for the hours in question.

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 to the extent indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois this 28th day of January 1977.

