NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26063

THIRD DIVISION Docket Number SG-25766

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of General Committee of the Brotherhood of Railroad Signalmen on the Pere Marquette District of The Chesapeake and Ohio Railway Company that:

(a) Carrier violated the parties' Agreement, particularly paragraph 10 of Addendum 1 of the National Vacation Agreement, as amended, when during period of October 15 through October 28, 1982 Claimant was required to perform more than 25% of the work assigned to C&S Maintainer Jeff Hiller during his vacation period of October 13 through October 29, 1982.

Carrier should now pay C&S Maintainer D. L. Campbell a total of 86 1/2 hours at his overtime rate of pay in addition to payment already allowed for the violation as cited in part (a) above. [General Chairman File: 82-48-PM. Carrier File: SG-677]

OPINION OF BOARD: A C & S Maintainer was on vacation from October 13 through October 29, 1982. In his absence, according to the Organization, Claimant was required to perform more than 25 percent of his work. This, the Organization suggests, is a violation of paragraph 10(b) of Addendum 1 of the National Vacation Agreement, as amended:

> "(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

Carrier disagrees, contending that while Claimant performed certain AFE work on the vacationing Maintainer's territory, it was a part of Claimant's regular duties and not a part of duties exclusive to the absent Maintainer's assignment.

Carrier further argues that the Organization's reliance on paragraph 10(b) is improper since work was not distributed among two or more employes, a prerequisite for triggering the application of that Rule.

Initially, the Organization has a twofold burden: (a) to prove that paragraph 10(b) of the National Vacation Agreement applies when the work of a vacationing employe is distributed to a single co-worker and (b) to prove that the work distributed to the co-worker did, in fact, belong to the vacationing employe.

Clearly, based on the record, the work in question (disconnecting track wires, ensuring that signal operations were functioning, etc.) was not a part of the Maintainer's regular assignment, but, as Carrier conceded in its rebuttal, the vacationing Maintainer "would have performed the AFE work as well as the duties of his regular assignment." There is nothing in paragraph 10(b) that suggests that the work in question must be a part of a vacationing employe's regular assignment, merely that it be a part of his or her workload.

As to the question of work being distributed to a single employe, we look to Referee Wayne Morris' Interpretation of paragraph 10(b) of the Vacation Agreement, specifically Referee's Decision (5)(d):

> "(d) The referee is satisfied that there is a great deal of merit in the following contention of carriers:
>
> 'Nothing in Article 10(b) prohibits certain of the work of the vacationing employee being allocated to one employee and his own rate paid where the volume is insufficient to require the designation of another employee to fill the place of the vacationing employee.'
>
> He believes that the statement falls within the meaning of Article 10(b) and he rejects the technical objections which the employees raised against it. Of course, it is to be understood that the 25 per cent protection applies and the distribution of the work will not burden any employee to whom it is distributed."

From this statement, it is clear that the so-called "25 per cent protection" applies to a single employe and that when an allocation of work is made, the employe is paid "his own rate."

Based on the record, it appears that Claimant worked more than 25 percent on another man's territory, doing a vacationing Maintainer's job. Since Article 10(b) places a limit on the amount of work that can be distributed to a fellow employe, we will sustain the violation.

As to the second paragraph of the employe's Claim, the record before this Board does not support the 86 1/2 hours claimed. In the handling on the property, Carrier pointed out that its records revealed that Claimant worked 62 hours and 15 minutes on AFE projects and 3 hours and 15 minutes at Maryville account a car-train accident, for a total of 65 1/2 hours. No exception thereto was taken by the Organization.

The record also does not support the awarding of payment at the overtime rate in addition to payment already allowed for work performed. Further, this Board has no authority to assess punitive damages indiscriminately where no fraud, discrimination, or malice is shown in the record and where no employe is shown to have suffered any damages by reason of the alleged violation. Accordingly, we will sustain the Claim for 65 1/2 hours at the straight time rate of pay.

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 Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.