

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company (SOU):

Case No. 1

Claim on behalf of monthly paid Traveling Signal Maintainer L. P. Lohr, headquarters Front Royal, VA., assigned working hours 8 am to 5 pm Monday thru Friday, restday Sunday for the following:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 49 among others, when they failed or refused to pay Traveling Signal Maintainer L. P. Lohr for time worked and held for duty in excess of his 213 base hours for the month of August 1988.

(b) Carrier now be required to compensate Traveling Signal Maintainer L. P. Lohr for 91 2/3 hours at his overtime rate of pay or \$1943.00, for time worked and held for duty in excess of his 213 base hours for the month of August 1988. Claim is in addition to any other pay he has received or due him account of Carrier refused to compensate him in accordance with the provisions of Rule 49 in that he was not paid for time worked or held for duty in excess of his 213 base hours. Carrier file SG-755. BRS Case No. 7775 (SOU).

Case No. 2

Claim on behalf of monthly paid Traveling Signal Maintainer L. P. Lohr, headquarters Front Royal, Va., assigned working hours 8 am to 5 pm Monday thru Friday, restday Sunday, for the following:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 49 among others, when they failed or refused to pay Traveling Signal Maintainer L. P. Lohr for time worked and held for duty in excess of his 213 base hours for the month of September 1988.

(b) Carrier now be required to compensate Traveling Signal Maintainer L. P. Lohr for 94.4 hours at his overtime rate of pay or \$2001.28, for time worked and held for duty in excess of his 213 base hours for the month of September 1988. Claim is in addition to any other pay he has received or due him account of Carrier refused to compensate him in accordance with the provisions of Rule 49 in that he was not paid for time worked and held for duty in excess of his 213 base hours. Carrier file SG-759. BRS Case No. 7775 (SOU)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant in this matter was a monthly rated Traveling Signal Maintainer. In his assignment Sunday was the rest day and Saturday was a stand-by day. The dispute was triggered by a conversation between Claimant and his Supervisor on August 2, 1988 during which his Supervisor advised Claimant that he had to be available for telephone contact on Saturdays for possible signal problems. Claimant advised the Supervisor that he would comply and "...would be on hold for duty for twenty-four hours for each Saturday and holiday as per instructions." Subsequently a letter from the Supervisor in question stated as follows:

"On August 2nd, 1988, I talked with Traveling Signal Maintainer L. P. Lohr because S&E Super. Clark had tried to contact him due to crossing signal trouble on Saturday, July 30th. Super. Clark was unable to contact Mr. Lohr. I told Mr. Lohr that since his job was a monthly rated position, he had to be available on Saturdays where we could contact him by phone.

I was very careful not to tell Mr. Lohr he was on call. I only stated we must be able to contact him if we need too."

The Organization argues that Rule 49 was violated by Carrier's actions in this case. It is averred that Claimant was told that he would be held on duty for twenty-four hours each Saturday. Under Rule 49 time held on duty would be paid at the punitive rate after 213 hours in any calendar month. In this dispute Claimant was held on duty 91 2/3 hours over the 213 hours in August 1988 and 94.4 hours in September. In sum, the Organization insists that Claimant was instructed to be available for call for twenty-four hours each Saturday, until that was changed after the filing of these claims.

Carrier states that Claimant's monthly rated position includes a six day work week with Saturday designated as a stand-by day. When Saturday work occurs, Claimant receives no additional compensation. On the Saturdays claimed in this matter Claimant performed no service. It is urged that there is no violation in this dispute since the Agreement is clear that time not worked on Saturday will not be considered time held on duty, for a monthly rated employee. No loss has been established by the Organization, as Carrier views it and furthermore there is no proof that Claimant surpassed the 213 hours which would entitle him to overtime.

The applicable Rule in this dispute provides as follows:

"Monthly Paid Traveling Employees-Rule 49: (Revised effective January 1, 1965)

Employees assigned to the maintenance of a section, who do not return to home station daily and who are regularly assigned to perform road work and are paid on a monthly basis, shall be assigned one regular rest day per week, Sunday if possible. Past practice with respect to making an earnest effort to allow employees paid under this rule to be off on the seven recognized holidays without deduction from monthly rate will be continued. Ordinary maintenance or construction work not required on Sundays prior to September 1, 1949 will not thereafter be required on the sixth day of the work week. Time off for a full day period on the sixth day of the work week or on holidays shall not be considered time actually worked or held for duty.

Except for service on assigned rest days, the monthly rate for such employees shall cover all service performed, including overtime, holiday service, and service on the sixth day of the work week, up to $211 \frac{2}{3}$ (now 213) hours in any calendar month.

Actual time worked or held for duty, exclusive of assigned rest days, in excess of $211 \frac{2}{3}$ (now 213) hours in any calendar month will be paid for at the rate of time and one-half.

Where the rest day, holiday, call, overtime and other rules of this agreement require payment to employees covered by this agreement, such rules shall not apply to employees paid under this Rule 49 except as follows:

(a) Until a total of 211 2/3 (now 213) hours is reached in a calendar month, such an employee will be credited toward such 211 2/3 (213) monthly hours on the basis of one minute for each straight time minute and one and one-half minutes for each overtime minute where service described in such rules is performed. When such 211 2/3 (213) hours of actual time worked or held for duty has been accumulated, such an employee will thereafter be paid for actual time worked or held for duty at the time and one-half rate. No time on an assigned rest day shall be included in such accumulation of said 211 2/3 (213) hours."

An analysis of the facts in this dispute reveals that all that was required of Claimant was that he be available for contact by telephone on Saturdays. This was nothing new, insofar as monthly rated positions are concerned and no service was performed. Even more importantly, this identical issue, between the same parties was dealt with by this Board in Award 13121. In that Award we said, in part:

"It is the contention of Petitioner that if the Carrier requires a monthly rated employee to be at his headquarters on the sixth day of the workweek the employee is performing a 24 hour service for which he should be compensated at overtime rate.

Since Claimant was paid for Saturdays, whether or not he worked, the Carrier in the exercise of its management prerogatives, not circumscribed by the Agreement, could and did demand that Claimant hold himself available, on Saturdays, at his assigned headquarters. That this was inconvenient for Claimant or that he considered himself equally available at another geographical location is not material.

Applying the foregoing interpretation to the facts of record, Petitioner has failed to prove that Claimant worked more than 211 hours in the month of September 1960. We will deny the Claim."

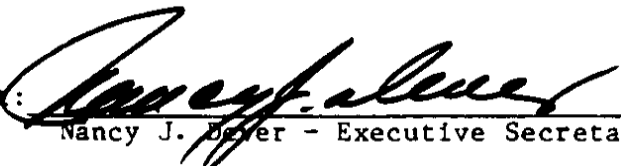
We do not find the reasoning in the above cited Award to be palpably erroneous; on the contrary we agree with the reasoning and it is equally applicable to this set of circumstances. Consequently the claims herein are without merit and must be denied.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.