

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30422
Docket No. SG-30297
94-3-92-3-28

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):

Claim on behalf of R. F. Meyer and E. B. Ivers, for sixteen (16) hours at the punitive rate and eight (8) hours at the double time rate of pay, because the Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 45-H, when it required them to standby for service and failed to compensate them as such."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This Claim consists of two separate holiday pay claims arising from Thanksgiving and the day after Thanksgiving, November 22-23, 1990. The essential facts are undisputed.

Prior to the two holidays, Claimants provided their supervisor with two pieces of information regarding administration of the day after Thanksgiving holiday. The first piece was a note to Claimant Meyer from his General Chairman. It read as follows:

"Here is some information on the Day after Thanksgiving 'Holiday.' Note that it will be considered the same as a 'Rest Day' insofar as Rules governing availability."

The second piece of information was a copy of a Letter of Understanding, dated January 8, 1982, from C. I. Hopkins, Jr., of the National Railway Labor Conference to R. T. Bates, president of the Organization. That letter read, in pertinent part, as follows:

"This will confirm our understanding concerning the granting of an additional holiday, the day after Thanksgiving Day, (Article IV of the January 8, 1982 National Agreement) that an employee who performs service on the day after Thanksgiving Day on a monthly rated position, the rate of which is predicated on an all-service performed basis, shall receive eight hours pay at the equivalent straight time rate, or payment as required by any local rule for holiday work, whichever is greater. Any local rules or practices governing availability on the assigned rest day of such employee will also apply to the day after Thanksgiving Day.

Please indicate your concurrence by affixing your signature in the space provided below."

The supervisor replied in writing to the Claimants on November 21, 1990. His note reads as follows:

"Based on information from Payroll Dept. the day after Thanksgiving is incorporated into the monthly rate of pay. You are being payed (sic) for this holiday and will be treated as any other holiday.

Each of you will protect Thanksgiving and the day after Thanksgiving."

Claimant Meyer was called in to work on both days. He worked 4.1 hours on Thanksgiving and 2.7 hours the day after Thanksgiving. Claimant Ivers was not called to work either day.

Claimants are both monthly rated employees who say they stayed by their phones on the two holidays as instructed by their supervisor.

The basis of the Organization's claim for the day after Thanksgiving is that it was to be treated the same as a "rest day" for a monthly-rated employee. The Organization asserted that monthly rated employees are not required to protect their assignments on rest days under the current Agreement. The Organization further asserted that an employee is entitled to extra compensation for standby protection on a rest day. In support, the Organization cited Rule 45-D, which reads:

"Monthly-rated employees shall be assigned one regular rest day per calendar week (Sunday, if possible). Overtime rules applicable to other employees who are subject to the terms of the Signalmen's Agreement will apply to service which is performed by monthly-rated employees on such assigned rest day."

Carrier responded that the supervisor "reminded" the Claimants they were expected to protect the holidays. It went on to point out that Rule 12-D clearly provides monthly-rated employees are subject to call and noted that the only exception is during vacation periods. The pertinent portions of Rule 12-D read as follows:

"D. Monthly rated employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Carrier where they may be called. When such employees desire to leave their headquarters or section, they will notify the person designated by the Carrier that they will be absent, about when they will return, and when possible where they may be found.

NOTE: An employee will not be subject to call during vacation period"

With the issue thus joined, it was incumbent upon the Organization to provide probative evidence of the "rest day" exception to Rule 12-D that it said existed. A thorough reading of the on-property record fails to reveal any such evidence. Since the Organization bears the burden of proof in this regard, and it has not satisfied that burden on this record, this portion of the Claim must be denied.

The second portion of the Claim alleges that being subject to call on the Thanksgiving Day holiday, as instructed by the supervisor, entitled the Claimants to 24 hours pay (16 punitive and 8 double time) in addition to their proportionate monthly compensation for the day. It cites Rule 45-H in support. The Organization contends that, in essence, the Claimants had to remain by the phone and were not allowed the usual freedom of movement that Rule 12-D normally allows while subject to call.

The Carrier's response to this portion of the Claim is very similar. It again noted that the supervisor "reminded" the Claimants of their "subject to call" obligation under Rule 12-D and pointed out that the rule provides no exception for holidays.

There is no evidentiary support for the Organization's assertion that the Claimants were confined by the Carrier to their homes for the holiday. There is nothing in the supervisor's written note that imposes a more restrictive "subject to call" obligation than Rule 12-D normally requires. To the extent the supervisor's note provides any guidance at all, it appears to suggest only that the Claimant's protection obligation is the same as any other holiday. No evidence of a more restrictive obligation has been found elsewhere in the record. Under the circumstances, we must conclude the Organization has not proven that an unusually restrictive "subject to call" status was required of Claimants on the Thanksgiving Day holiday. Accordingly, this portion of the Claim must also be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.

LABOR MEMBERS DISSENT

TO

AWARD 30422, DOCKET SG-30297
(Referee Wallin)

When resolving disputes in this industry, Referees must exercise caution. The parties often raise multifarious issues that while being in support of either party's argument, are not the genesis of the Question At Issue.

As noted, the Majority acknowledged that the Organization provided evidence indicating that the day after Thanksgiving Day is considered the same as a "Rest Day." The Agreement additionally states that monthly rated employees are not subject to call on rest days.

The crux of this involves a Supervisor who instructed the Claimants that they were expected to protect the holidays and were not allowed to leave their homes. As evidenced in the record the Claimants did not agree with these instructions and challenged the Supervisor's interpretation of the Agreement. The record further reveals that the Supervisor refused to rescind his orders and advised the Claimants that they were expected to provide protection during the holidays. As evidenced, the Claimants complied with these orders and responded to several emergency calls during this time.

Notwithstanding the Organization's arguments concerning the day after Thanksgiving Day being considered a rest day, Agreement 12-D clearly allows employees the latitude to leave their homes, wherein it states: **"When such employees desire to leave their**

headquarters or section, they will notify the person designated by the Carrier that they will be absent, about when they will return, and when possible where they may be found." Obviously, the Agreement was violated and Claimants were not allowed to exercise the option of Agreement Rule 12-D.

The record reflects that Agreement Rule 45 lends credence to the Organization's position. The language clearly defines the meaning of "rest days" vs. "subject to call days." As also noted in Section (H) of that Rule, it states, "Monthly-rated employees will be compensated under Rule 11 for any service required by the Carrier to be performed on one of the designated holidays specified in Rule 6." Notwithstanding the clear meaning of the Agreement, the Board has historically held that, "Those who stand and wait also serve."

The Majority, while denying the instant claim on the basis that the Organization failed in the burden of proof, which we disagree, went beyond simply denying the claim on that basis and provided an interpretation of a National Holiday Agreement that is contrary to the clear understanding that is prevalent in the railroad industry.

In view of the foregoing, it is obvious that the findings of the Majority are based on an unclear reading and understanding of the Agreement, rendering the award palpably erroneous and of no value.

Respectfully submitted,


C.A. McGraw
Labor Member