

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31637
Docket No. SG-31500
96-3-93-3-485**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co.

Claim on behalf of W. F. Lester for payment of an additional \$0.45 per hour for his vacation period of May 11 to 15, 1992, account Carrier violated the current Signalmen's Agreement, particularly Attachment B, Item 7(a), (b), when it failed to provide the Claimant with compensation equal to the rate paid to the Claimant on his regular assigned position. Carrier's File No. SIG 92-19. General Chairman's File No. SWGC-472. BRS File Case No. 9073-SP."

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.

The Claimant is a Signalman who had a vacation period of May 11-15, 1992. He is, intermittently or as a regular duty, assigned to drive a Signal Gang truck, for which work he is paid a differential of 45 cents an hour. In his vacation pay, the 45-cent

differential was not included. The Organization contends that it should have been included, citing Rule 3(f), and Attachment B(7) of the National Vacation Agreement, as follows:

Rule 3(f)

"A signalman or assistant signalman assigned to a gang who in addition to the assignment of signal work who is required by the Carrier to operate a gang truck (over one-ton rating) used to haul employees and material will be paid a differential allowance of forty-five (45) cents per hour. This differential allowance will not be subject to general wage increase or cost of living allowance. The duties of driving will be offered to the senior qualified signalman by the gang foreman, it being understood that if the senior signalman does not desire the driving duties, that the gang foreman may only assign it to such senior signalman if there are not other qualified signalman or assistant signalman drivers in the gang. This rule will not apply to monthly rated employees."

Attachment B

"7. Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.

(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement."

The Organization insists that this is the first instance in which an employee driving a Signal Gang truck "has not received the differential pay during a vacation period."

The Carrier points out that its failure to pay more than the basic rate is grounded on changes in the Rules effective May 1, 1990. Among these Rules changes were elimination of the position of Signalman Driver and deletion of its hourly rate from the Wage Schedule. Simultaneously, the above-quoted Rule 3(f) was added. The new Rule clearly states that the 45-cent differential applies only when a Signalman or Assistant Signalman "is required by the Carrier to operate a gang truck." With these changes, it is without effect on vacation pay if the Claimant's earlier position in 1989 or prior may

have been Signalman Driver or whether or not he had been assigned to drive a truck immediately prior to his vacation. The contractual change makes the payment effective only for the hours employed as a Driver, which by definition does not include vacation. The 45 cents is not part of the basic rate, and the Claimant is not entitled to be paid the differential during his vacation as if he still held the now defunct position of Signal Driver.

The Organization makes some passing reference to Attachment B, 7(b), quoted above. This, however, applies only to employees "paid a daily rate to cover all services rendered, including overtime." This does not apply to the Claimant's position.

AWARD

Claim denied.

ORDER

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 29th day of August 1996.