

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36584
Docket No. SG-36358
03-3-00-3-602**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of L. J. Milligan for payment of 12 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 12(a), when on June 19, 1999 it required the Claimant to perform standby service and then failed to compensate him for doing so. Carrier’s File No. K0699-5337. General Chairman’s File No. BRS 9902812. BRS File Case No. 11319-KCS.”

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 were given due notice of hearing thereon.

The Claimant in this case was assigned as a Signal Maintainer at Heavener, Oklahoma. His position was monthly rated and contemplated service and pay on six days

per week for all services performed. His monthly rated position contemplated that he would have one regular rest day per week which would be Sunday.

On this property, the parties have a Rule that reads as follows:

"Rule 12 - Calls (Availability/Coverage and Pay)

- (a) Employees assigned to regular maintenance duties will notify the person designated by the management of their regular point of call. When such employees desire to leave their home station or to be unavailable for call for a period of time in excess of three (3) hours, they shall make arrangements with an adjoining maintainer to cover their calls during such period, and they shall notify the person designated by the Management that they will be away or unavailable and which maintainer will be protecting their calls during their period of unavailability. If unable to arrange coverage of their territory by another maintainer, employees will be responsible for protecting their territory until such time as arrangements for coverage are made. Unless registered absent, the regular assignee will be called.

Signal Maintainers and Signal Inspectors shall be required to stand by for call service not more than one (1) weekend out of every two (2). Standby schedule shall be prepared by Management and a copy will be provided to the Local Chairman. Assigned standby may be adjusted by the affected employee and an adjoining Signal Maintainer, or Inspector where appropriate, subject to approval of the Signal Supervisor. The Carrier shall furnish each Signal Maintainer and Inspector a pager for call service.

- (b) Signal Maintainers shall be assigned individual territories, and when required by the Railway to perform work outside the limits of their assigned territories during their regular assigned hours will be additionally compensated for such work on the minute basis at one half the straight time hourly rate, from the time notified until they return to their work location during their tour of duty, or home station after end of tour of duty. Time after end of tour of duty to be compensated for at the overtime rate. When Signal Maintainers are called by the Railway to perform work outside the limits of their

assigned territories after regular hours of the work week and on Saturdays and designated holidays, the provisions of Rule 10 will apply.

- (c) Signal Inspectors will be assigned to designated territories and will be compensated additional half-time pay during regular assigned hours when required by Carrier to work off assigned territory or required to perform duties that are not regularly assigned duties. Signal Inspectors will be paid under Rule 10(d) of the agreement when required to work off assigned territory outside regular assigned hours."

The portion of Rule 12 which is of concern in this case is found in the second paragraph of Section (a) which stipulates that on one out of every two "weekends" the Signal Maintainer is required to stand by for call. Conversely, on one out of every two "weekends" the Signal Maintainer is not required to stand by for call. While the term "weekend" is not clearly identified, the claim as presented in this case involves the Saturday weekend of June 19, 1999, on which the Claimant was allegedly required to stand by for call.

It is the Organization's assertion that on this particular "weekend," the Claimant was notified by a specifically-named Signal Supervisor instructing him to stand by for call. This instruction was allegedly given in spite of the fact that another Signal Maintainer had already been scheduled to provide stand by service on that particular "weekend."

Strangely, the assertion relative to the Signal Supervisor's specific instructions to the Claimant was never addressed by the Carrier during the on-property handling of the dispute. This leaves the Board with the unchallenged assertion that such instructions were, in fact, given.

The Carrier reminds the Board that the intent of the parties can best be ascertained from the words used in the Collective Bargaining Agreement. This is good advice. The words used in Rule 12 require that a Signal Maintainer "shall be required to stand by for call service not more than one (1) weekend out of every two (2)." The Claimant in this case was required to stand by for call service on more than one weekend. That is the nub of this case.

The Carrier argues that there is no Rule language to specifically provide for a penalty payment even if there is a violation of the weekend-off provision of Rule 12. The Board does not agree with this premise. The parties clearly had some intent in mind when they included this provision in the Agreement. It has meaning that must be considered when its requirements are violated.

The Board has previously held that when a standby employee is under the control and direction of the Carrier and when the Carrier has the authority to direct the activities of the standby employee, such a situation constitutes service which is compensable "work" under the Agreement.

In this case, the Organization made a prima facie case that the Claimant was entitled to his one out of every two weekends off. It is unrefuted that the Claimant was specifically instructed by proper authority to hold himself in standby status on the weekend on which, by the language of the Rule, he was entitled to be off duty. He is, therefore, entitled to be compensated for the period of the standby service.

That brings us to what is the proper compensation for this period of standby service. Rule 46 contains the answer to this question. The pertinent language of the Rule reads as follows:

"Rule 46 - Monthly Rated Employees

- (a) **Inspectors, Foremen, Signal Shop Foremen, Signal Maintainers, Relief Signal Maintainers, and Special CTC Maintainers will be paid a monthly rate. The monthly rates for such positions are based on 213 hours per month. Future wage adjustments shall be made on the basis of 213 hours per month. Except as otherwise provided, employees filling these positions shall be assigned one regular rest day per week, Sunday, which is understood to extend 24 hours from their regular starting time. Rules applicable to hourly rated employees shall apply to all service on Sunday and to ordinary maintenance or construction work on holidays or on Saturdays.**
- (b) **Except as provided herein the monthly rate shall be for all work subject to Rule 1 of this Agreement on the position to which assigned during the first five days of the work week, Monday to Friday,**

inclusive. Also, the monthly rate shall be for other than ordinary maintenance and construction work on Saturdays.”

The language of this Rule clearly provides that the monthly rate of pay includes the standby service on Saturday, June 19, 1999.

It is the Board’s conclusion, therefore, that the provisions of the second paragraph of Rule 12(a) were violated in this case. The proper compensation for this violation is covered by the language of Rule 46(b), namely, the regular monthly rate of pay of the Signal Maintainer position. Accordingly, no further compensation is due.

The Carrier suggests that an equitable solution to this case would be to permit the employee to have an alternate weekend off. The Carrier states that this type of solution has been applied in the past. Such a remedy is not within the Board’s jurisdiction, except to recommend it to the parties for their consideration.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of June 2003.