

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: ( System Federation No. 2, Railway Employees'  
( Department, A. F. of L. - C. I. O  
( (Electrical Workers)  
(  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 1 - Section 1(a), 2(a), 3(a) and 4(a) and (d) of the June 1, 1960 controlling agreement on October 7, 10 and 13, 1975 when they instructed Telephone Maintainer O. H. Nance to work in excess of his eight (8) assigned hours to perform work on equipment owned and leased from Univac and Incoterm at Natchez, Mississippi.
2. That accordingly, the Missouri Pacific Railroad Company compensate Telephone Maintainer O. H. Nance twenty and five tenths hours (20.5') at the punitive rate for October 7, 10 and 13, 1975.

Findings:

The Second 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 employed as a Telephone Maintainer for the Missouri Pacific Railroad Company. On October 7, 10 and 13, 1975, the Claimant was instructed by the data supervisor to go to Natchez, Mississippi to perform tests on data equipment and to locate the problems causing the Univac printers to be inoperative. The equipment involved is known as Yard and Terminal Subsystem (YATS) and is used for transmitting data to a central computer in the Carrier's headquarters. The communications system includes Carrier's own equipment as well as leased equipment such as Univac printers and an Incoterm mini-computer. For the work performed on this equipment, the Claimant filed a claim for twenty and five-tenths hours (20.5') which included six hours overtime for Tuesday, October 7, five and one-half hours overtime for Friday October 10, and two hours overtime for Monday October 13, 1975. However, the Communications Supervisor removed the claimed twenty

and five tenths hours from the Claimant's time call. In a letter to the Claimant, the Communications Supervisor stated his reasons for removing the claimed hours as follows: "It is in line with the Telephone Maintainer's duties to determine the trouble on Data and report it to the proper persons to clean." As a result of Carrier's action, the Organization has processed this claim on the basis that the Carrier violated the Agreement effective June 1, 1960, specifically Rule 1 - Section 1(a), Rule 2(a), Rule 3(a), Rule 4(a) and (d).

The Organization contends that all of the Rules of the agreement must be given consideration, and that the aforementioned rules show that the Claimant is entitled to overtime pay. It is also the Organization's position that the monthly rate afforded Claimant covers all services rendered on an eight-hour assigned work day, five day work week, stand-by day and all holidays, but no allowance for overtime.

The Carrier takes the opposing position that Telephone Maintainers are paid a monthly rate of pay based on 212-1/3 hours per month (Rule 107(c)) which is 38-1/3 hours per month more than hourly rated employees. It is the Carrier's contention that the additional hours comprehended in the monthly rate compensates Telephone Maintainers for those occasions when they are required to work in excess of eight hours per day, Monday through Friday, and certain work which may be required on Saturday. In the instant dispute the days involved are Tuesday, Friday and Monday.

Since Telephone Maintainers are required to work irregular hours to insure the proper operation of communications systems, a special rule is in effect concerning monthly rates of pay for said employees. This special rule, Rule 107(c) reads in pertinent part as follows:

"Telephone Maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday if possible. Rules applicable to the classification of electricians shall apply to service for monthly rate Telephone Maintainers on their assigned rest day. Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week."

Rule 107(c) is a special rule dealing specifically with the monthly rate of pay for Telephone Maintainers. This Rule clearly states that the monthly rate will cover "all services rendered". There are only two exceptions stated in the rule. The first exception refers to the classification applicable to service on the employee's rest day, and the second exception refers to the type of work that will be required on the sixth day of the work week. Neither exception is applicable to the instant dispute. Rule 107(c) clearly states that Telephone Maintainers are paid a monthly rate for all services rendered. It makes no mention of the number of hours per day that an employee will be required to work; nor does the rule state which six days of the week an employee will be required to work.

This Board has held numerous times that where in an agreement there are general and special rules, the special rule will take precedence over the general rule. See Third Division Awards No. 21621 (Randles), and No. 14242 (Perelson). Rule 107(c), we hold, is a special rule and clearly applicable to the dispute at hand.

The Organization's claim is based on the contention that the Carrier violated certain sections of the applicable Agreement. They are Rules 1 - Section 1(a), 2(a), 3(a), 4(a) and (d), all of which are general in nature and apply to all employees unless there is a specific rule which applies to a certain classification of work, such as Rule 107(c).

The Organization contends that the monthly rate referred to in Rule 107(c) is based on an eight hour work day, five day work week, stand-by day and all holidays. It is axiomatic that it is not the purpose of this Board to read into the agreement that which is not expressed therein. The Rule makes no mention of an eight-hour work day as asserted by the Organization. Therefore, this Board will not read such a requirement into Rule 107(c).

It is the opinion of the Board that the Carrier did not violate Rules 1 - Section 1(a), 2(a), 3(a), 4(a) and (d). Moreover, the Carrier's actions were supported by Rule 107(c) which is a specific rule and which shall prevail in the instant claim. The claim shall be denied.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of April, 1978.