

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart 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), (d) and (g) of the June 1, 1960 controlling agreement when they called Telephone Maintainer J. E. Brown at 4:00 A.M. on October 10, 1975 to perform work on equipment owned and leased from Digital at North Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company compensate Telephone Maintainer J. E. Brown two and seven tenths (2.7') at the punitive rate for October 10, 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.

Claimant, a monthly rated Telephone Maintainer, was called by the Transportation Supervisor, at North Little Rock, Arkansas, at 4:00 A.M. on Friday, October 10, 1975, to correct a problem in Carrier's communication equipment. After an inspection thereof it was determined that the problem was in a mini-computer leased from and maintained by Digital Equipment Corporation who, upon notification, had the necessary repairs made. Claimant performed no work whatsoever on such equipment. Claimant filed claim for two and seven-tenths (2.7) hours account being instructed to report to work outside the assigned hours of his work day.

The Employees contend that the Rules of the June 1, 1960 Controlling Agreement violated were Rule 1, Section 1, - "Hours of Service" -, Rule 2(a) - "Shifts" -, Rule 3 - "Overtime" -, and the "Overtime and Calls"

Rules, which entitles claimant to overtime pay for the hour spent outside of his regular work day.

Carrier argued, among other things, to the contrary. It asserted that Claimant was paid under a special rule (Rule 107(c)) and that the monthly rate established thereunder is predicated on pay for 212 1/3 hours which represents some 38 1/2 hours more than the 174 hours comprehended in the month of the hourly rated employee. Carrier averred that such additional 38 1/2 hours comprehended compensation for the occasions when a requirement to work in excess of eight hours per day might occur. Said Rule 107(c) provides:

"(Western and Southern Districts only.) 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 electrician 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 sixty day of the work week. The straight time hourly rate for such employees shall be determined by dividing the monthly rate by *208-2/3 hours. Further wage adjustments, so long as monthly rates remain in effect, shall be made on the basis of *208-2/3 hours per month. Except as specifically provided in this paragraph (c), the rules applicable to monthly rated telephone maintainers prior to September 1, 1949, shall continue without change."

*Changed to 212-1/3 hours on January 1, 1973, and to 213 hours on January 1, 1976.

The Board finds the position of Carrier to be the more persuasive. Rule 107(c) is a special Rule and in line with the general rule of contract construction, takes precedence over the general rules referred to by the Employees. Said Rule 107(c) contemplated the inclusion of overtime within the phrase "all services rendered." As was pointed out by this Division in its Award 4086 involving the same parties:

"Telephone Maintainers receive a monthly salary to cover all services rendered, including overtime on the first five days of the work week. All the work in question was done on those days, one item at midnight and the others at times not stated."
(Emphasis added)

The same issue raised here, i.e. whether such additional 38 1/2 hours contemplated inclusion of overtime for monthly rated telephone maintainer in the phrase "all services rendered", and which involved the same parties was raised in other cases heard and decided against the Employees in previous Awards of this Division, to wit, - Awards 5408, 5436, 5980, 7488 and 7489. The Employees here, in fact, concurred that Rule 107(c) compensates telephone maintainers for all service rendered including overtime. Third Division Award similarly passed on the same issue raised herein holding, as in Award 14242, that:

"... the claimant was properly paid for 'all services rendered' and is not entitled to the 'overtime pay' requested, as we have interpreted the phrase 'all services rendered' to include overtime.

See Awards 6850 (Whiting); 11574 (Hall); 10968 (Dorsey); 11479 (Hall); 12636 (Kane); and 10766 (Russell)."

This Board is not authorized to change or amend the Agreement which it would otherwise be doing if it were to sustain this Claim. In the circumstances this Claim will 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1978.