

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

St. Clair Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of Carl Tano, signal maintainer, Western Avenue Junction, for compensation for a minimum call, two hours and forty minutes, at time and one-half his regular rate of 97 cents per hour, in lieu of compensation allowed by the Carrier for calls on November 6, 1942, and November 25, 1942.

JOINT STATEMENT OF FACTS: Carl Tano held assignment as signal maintainer at Western Avenue Tower, Chicago, hours 7:30 A. M. to 4:00 P. M.

On November 6, 1942, he arrived at tower at 7:10 A. M., and upon arrival was advised by the towerman that Switches Nos. 1 and 3 were blocked with coal which had fallen from a passing car and would have to be cleaned out.

On November 25, 1942, he reached the tower at 7:10 A. M., and upon arrival was advised by towerman that lights on color position signal at Peoria Street were not burning.

On both dates Tano started work at once to remedy the trouble and worked continuously through his regular assignment.

On each date he was paid twenty minutes overtime for the service 7:10 A. M. to 7:30 A. M., the starting time of his regular assignment.

POSITION OF EMPLOYES: The employees contend that this claim should be allowed in accordance with the provisions of Rule 16 of the current agreement in effect as of April 16, 1939. This rule is here quoted for ready reference:

"Employees released from duty and notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40) minutes at the time and one-half rate; if held longer than two (2) hours and forty (40) minutes they will be paid at the time and one-half rate computed on the actual minute basis. The time of employees so notified will begin at the time reporting for work and end when released. The time of employees so called will begin at the time called and end at the time released at home station."

It will be observed that this rule specifically provides that employees will be paid a minimum allowance of two hours and forty minutes at the time and one-half rate if notified or called to perform service outside of and not con-

Your Board will note that this was the call rule and that it was not greatly unlike the present call rule, Rule No. 16. If, as the Employees contend, the object of changing the call rule was to change the practice of paying on the basis of continuous time when the service was continuous, it is clear that this object was not accomplished. It is true the language in the former rule was changed and the last sentence of the rule was entirely deleted. However, the deletion of this sentence did not change that part of the first sentence, which, both before and after revision, limits the application of the rule to service "not continuous with regular working hours." Nor did it change Rule 13 in the present agreement providing for compensation only on the basis of actual minutes at the rate of time and one-half for service "continuous with regular working hours."

In contradiction to the claim of the Employees that the language of Rule No. 16 in the present agreement was intended to change the practice of paying on the basis of continuous time in such cases, the Carrier denies there was any such understanding or intention that Rule No. 16 would have such effect. In all similar instances which have occurred since the present agreement of April 16, 1939, went into effect employees have been paid upon the same basis as is now disputed. This is the first claim or protest made by the Employees since the present agreement went into effect more than four years ago, which can only indicate that the Employees had the same understanding as the Carrier.

When trouble occurs at an interlocking plant or in connection with signal operations outside of the regular working hours of signalmen, the Carrier is vested with the discretion of determining whether to call an employee for immediate service to remedy the defect or to decide that the defective condition is not serious and can wait until the regular force goes on duty. In the two instances involved in this claim, the claimant was not called for extra service in the manner contemplated by Rule No. 16. As the matter of fact, the correction of the defective conditions could have been deferred another twenty minutes until the starting time of the signal maintainer. The Carrier, however, is not relying upon this defense and was entirely willing that the signalman upon his arrival should start work to remedy the defective conditions, and was entirely willing to pay overtime for the extra service on the basis of Rule No. 13, which it did.

Since the service performed by the claimant is exactly that contemplated under Rule No. 13, his compensation in accordance with the provisions of that rule was proper, and the claim of the Employees is without merit and should be denied.

OPINION OF BOARD: The matter in difference between the parties to this dispute is whether work performed during twenty minutes in advance of but continuous with the workers' regular working hours should be compensated as a minimum call under Rule 16 or as overtime under Rule 13 of their working agreement.

The pertinent portion of the Overtime Rule reads:

"Overtime hours, continuous with regular working hours, shall be computed on the actual minute basis at the rate of time and one-half."
(Rule 13.)

The Call Rule, upon which the employees premise the claim, reads as follows:

"Employees released from duty and notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40) minutes at the time and one-half rate; if held longer than two (2) hours and forty (40) minutes they will be paid at the time and one-half rate computed on the actual minute basis. The time of employees so notified

will begin at the time reporting for work and end when released. The time of employes so called will begin at the time called and end at the time released at home station."

Time and one-half on the minute basis is the rate generally provided by the contract for time in addition to the regular eight hours of work. An important exception to the application of the time and a half rate is the provision made by Rule 16 for compensating the worker for a minimum call. This rule was obviously written into the contract to discourage irritating and unprofitable interruption to the worker's leisure hours, by providing for extraordinary compensation for isolated calls to duty. The apparent purpose of the rule, and the words in which it is couched, indicate an intention to deal with special periods of work separated from the regular working hours by a period of duty-free time. They mark the period apart as having a time at which it begins and at which it ends, and describe the service as "outside of and not continuous with regular working hours." It is not without some peculiar significance to the present inquiry that they have said that such a call period shall end at the "release" of the worker. Surely, these clear words supply no basis for an interpretation which would render Rule 16 applicable to a period of work performed in advance of and continuous with the regular working hours. Basis for such an interpretation must be found by going afield for evidence of an intention the words of the agreement do not make manifest.

Without determining whether there is sound basis for considering that which is extrinsic to the integration the parties have adopted as the manifestation of their agreement, we turn to a consideration of the argument of the employes. They found their claim upon the history of the rule.

Just prior to the current contract, the present Rule 16 embraced an added last sentence, reading:

"An employe so called less than two hours before his regular starting time, will be paid time and one-half time until his regular starting time, and thereafter at pro-rata time for the regular hours worked."

The major premise of their argument asserts that if this sentence were contained in the current contract, it would supply the rule governing the rate of compensation in the instant circumstances. The minor premise is that by deleting the sentence, the parties manifested an intention to change the rule. The conclusion reached is that they intended that the minimum Call Rule should obtain. We think the error in this conclusion stems from a false major premise. It will be observed that the sentence deals with an "employe so called." An employe so called under the Call Rule is one, "called to perform work outside of and not continuous with regular working hours." It is therefore manifest that the sentence deals with a brief period of work performed during the last two hours before the day's regular work begins but separated from that work by a lapse of duty-free time. As the minimum Call Rule was an exception to the general rule fixing time and one-half as the rate of over-time, this provision constituted an exception to the minimum Call Rule and established a modified form of extraordinary compensation for an isolated period of duty at some time during the last two hours immediately preceding the commencement of the regular work hours. It does not provide for time and a half for the time on duty during such a brief isolated period. No matter how brief the service, it provides for pay measured by the time of the call and the regular starting time. It follows that we entertain the view, that if the cited history is available to the process of interpretation, it does not furnish sound basis for a departure from the plain meaning of Rules 13 and 16 supra.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1944.