

Award No. 3304
Docket No. SG-3310

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim that Messrs. J. H. Charlton, D. W. Sawyer, M. J. Jackson, E. P. Tankersley, E. P. Liles and R. M. Thornton be paid at the overtime rates instead of the straight time rate already received for time put in by them after their regular working hours on the following dates:

Date	Time Returning to Headquarters	Hours per Claimant	Total Hours
*11-13-44	4:30 p.m. to 5:45 p.m.	1 1/4	5
11-14-44	4:30 p.m. to 5:30 p.m.	1	6
11-15-44	4:30 p.m. to 5:00 p.m.	1/2	3
11-24-44	4:45 p.m. to 6:45 p.m.	2	12
11-27-44	4:45 p.m. to 6:45 p.m.	2	12
*11-28-44	4:30 p.m. to 5:15 p.m.	3/4	3 3/4

* Signalman Liles did not perform any service on November 13 and Assistant Signalman Jackson performed no service on November 13 and 28.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. H. Charlton, Signal Foreman, was in charge of Signal Gang 12, headquarters at Signal Shop San Jose, California. The consist of the gang at the time the violation of the agreement occurred included the employees named in the claim.

Gang 12 is a repair and construction gang and normally covers that particular territory from Lick to San Francisco, a distance of 55.3 miles. The employees start their day's work at San Jose Signal Shop and return to it each night, where they return the excess materials to stock bins and store their tools and equipment. A truck is used by Gang 12 to haul the men, their equipment, tools and material to and from the job. This truck is not equipped with proper seats or other facilities for the safety or comfort of the men riding in the rear of the truck. See Brotherhood's Exhibits "A", "B", "C", "D" and "E" in case involving claim of George S. Wells, which is included in one of the eight Southern Pacific Company cases now here before the Board, identified as Brotherhood's file No. NRAB-179.

The regular working hours of Gang 12 are eight hours per day, as follows: 8:00 a.m. to 12:00 noon, and from 12:30 p.m. to 4:30 p.m. However, due to shortage of manpower the employees in this gang, like other signal employees on the Coast Division, were, on the dates involved, assigned to a

"Mr. Lyon: Yes, sir.

"Exam. Bickers: Notwithstanding that the principle back of the rule provides that a man shall be paid time and one half for service outside of his regular tour of duty?

"Mr. Lyon: Yes."

* * * *

It will be noted that the petitioner's then general chairman admitted that in circumstances similar to those existing in the instant case, an employe when required to travel continuous with his working hours, would receive payment for such travel time at the straight time rate of pay, notwithstanding the fact that such time might have involved periods of time after his regular working hours.

The carrier reiterates its position that when Claimant Charlton was compensated in accordance with Rule 1 of the current agreement, he was fully compensated for service rendered, and likewise reiterates that when the other claimants were compensated in accordance with Rules 5, 10 and 24, they also were fully and properly compensated in accordance with the current agreement.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket is without basis or merit and therefore, respectfully asserts that it is incumbent upon the Division to deny said claim.

OPINION OF BOARD: Because different rules are involved, this claim can better be determined by dividing it into two parts. We will designate as Claim (a) that of Signal Foreman Charlton and as Claim (b) that of the Signalmen and Assistant Signalmen.

We first state and determine Claim (b). Here the men involved had regularly assigned hours from 8:00 a.m. to 12:00 noon, and from 12:30 p.m. to 4:30 p.m. and were authorized to work one hour overtime from 7:00 a.m. to 8:00 a.m., or a total of nine hours, Sundays and holidays excepted. On the days involved in this claim they reported for duty at 7:00 a.m. and spent one and one-half hours (one day one and three-quarters hours) in traveling to the location where work was performed, and one and one-half hours (on two days two hours) returning to their home station. The employees claim pay at the overtime rate for the time involved after 4:30 p.m. The employees rely upon Rule 10:

"Overtime hours, continuous with regular working hours, shall be computed on the actual minute basis at the rate of time and one-half. Employees will not be required to work more than ten (10) hours without being permitted to have a second meal period. Time taken for meals will not terminate the continuous service period."

and upon Rule 24:

"Hourly rated employees performing service requiring them to leave and return to home station and who are not held out over night, will be paid continuous time, exclusive of meal period, from time reporting for duty until released at home station. Straight time for all straight time work. Overtime for all overtime work. Straight time for all time traveling or waiting."

The employees contend that the men were riding in a truck, were responsible for tools and material in the truck and required to put away tools and material after reaching their home station.

The Carrier relies upon the above cited rules and also Rule 5:

"Except as otherwise provided in these rules, eight hours of practically continuous application to work, exclusive of meal period, shall constitute a day's work."

The Carrier contends that the time involved was time spent "traveling" under Rule 24 and hence straight time only is payable.

It will be noted that in its essential features this claim presents the same questions and rules determined in Docket SG-3309, Award 3303. Rule 24 does not place any limitations or qualifications on "traveling". There is no question but that as the word traveling is generally understood the men here were "traveling". But that does not dispose of the question. Were the employees traveling within the contemplation of Rule 24, or were they working within the contemplation of Rules 5 and 10?

We think the Carrier has answered the question in the application it has made of the rules to the facts and employees involved in this claim. The Carrier set up an assignment of one hour overtime followed by eight hours straight time work. Obviously when it made that assignment it knew that these men would be traveling to the place where work was to be performed beginning at or shortly after 7:00 a.m. and would be traveling during the overtime hour at the beginning of the day. The Carrier paid these employees time and one-half for this overtime hour. In its letter to the General Chairman dated September 27, 1945, the Carrier sets out a table of service performed and compensation paid. It lists "Hours Worked" from 7:00 a.m. to 12:00 noon and 12:30 p.m. to 4:30 p.m. The Carrier accordingly has determined that time consumed in traveling to the location where work was to be performed was time "worked". Under this tabulation it obviously made payment for the hour from 7:00 a.m. to 8:00 a.m. under Rule 10 which refers to "working hours" and for the remaining 8 hours to 4:30 p.m. under Rule 5 which fixes "eight hours of practically continuous application to work" as a days work. In short the Carrier has determined that the time spent traveling to the place where work was to be performed was time worked. We are unable to see any rational basis for holding that the time returning from the place where work had been performed was not likewise time worked. No basis for distinguishing the one "traveling" from the other is pointed out. The Carrier having determined that time traveling on the outbound trip was time worked, we in accord therewith determine that time traveling on the inbound trip was also time worked.

As we said in Docket SG-3309, Award 3303, this does not read out of the rule the provision for "straight time for all time traveling or waiting". It means that under the factual situation here, as the Carrier itself has applied the rules, the time spent by these employees in going from their home station to their place of work and returning to their home station by truck is not "traveling" within the contemplation of Rule 24. Accordingly, Claim (b) should be sustained.

Claim (a) presents a different situation. Signal Foreman J. H. Charlton is a monthly rated employee. Accordingly, Rule 24, dealing with "hourly rated employees" does not apply to his claim. Rule 17, applicable to "monthly rated employees" provides "No overtime is allowed for time worked in excess of eight (8) hours per day". The employees rely upon a Memorandum of Agreement dated September 25, 1942. This Agreement in its preamble recognized that "account the present volume of signal work in progress and in prospect, and the importance and necessity, due to the existing national emergency, of expediting its performance and completion to the fullest extent" certain Signal Gangs were required to work Sundays, holidays and in excess of eight hours per day. The preamble further recites "Regardless of the number of hours work required on Sundays and the recognized holidays,

or in excess of eight hours per day, signal foremen who are compensated on the basis of a monthly rate for all services required and performed are not eligible for overtime". The Carrier expressed a desire to correct the inequities in gross compensation between the foreman and subordinate employees. Paragraph (1) of the Agreement provides "A signal foreman in charge of a gang, the employees of which are engaged on a particular signal project in excess of eight (8) hours per day ***shall be allowed overtime***" (Emphasis supplied) It is clear from the language of the preamble and the emphasized language of paragraph (1) that the allowance of overtime was not contemplated or authorized except to foremen engaged in work on a "particular signal project" as distinguished from work done in ordinary signal work, such as apparently is involved here. This conclusion is strengthened by the language of paragraph (3) "except as specifically provided herein, signal foremen shall not be allowed overtime".

Claim (a) accordingly should be denied.

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 Employees involved in this dispute are respectively carrier and employees 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 for the reasons given in the Opinion Claim (a) is denied and Claim (b) is sustained.

AWARD

Claim (a) denied. Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1946.