

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood that Mr. G. Carrick, Signal Helper, Fort Wayne, Indiana, be compensated for a minimum call (two (2) hours and forty (40) minutes) at time and one-half rate in lieu of compensation allowed by the Carrier (one (1) hour and fifteen (15) minutes at the time and one-half rate) for a call account emergency service May 16, 1946.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. Carrick is the regular assigned Signal Helper (Signal Maintainer Helper) with headquarters at Fort Wayne, Indiana. His assigned hours are from 7:00 A. M. to 12:00 Noon; and from 1:00 P. M. to 4:00 P. M.

At 5:45 A. M., May 16, 1946, Carrick was called to help the Signal Maintainer locate and clear signal trouble which was caused by wet track in the Fort Wayne yards. The trouble was not cleared and signals restored to normal operation until after the starting time of his regular assigned hours. Carrick was paid by the Carrier at the rate of time and one-half on the actual minute basis, from 5:45 A. M. to 7:00 A. M.

There is an agreement effective September 1, 1944, in effect between the parties to this dispute, and it is by reference made a part of the record in this dispute. This claim has been handled in the usual manner on the property without reaching a satisfactory settlement.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the Carrier violated the September 1, 1944 Agreement, specifically Rule 18, when it declined to compensate Mr. Carrick for a minimum call of two (2) hours and forty (40) minutes at the rate of time and one-half for services performed on May 16, 1946, when he was called to perform emergency service beginning at 5:45 A. M. on that date. Rule 18 reads as follows:

"Employees notified or called to perform work outside of and not continuous with the regularly assigned working hours shall report for duty promptly and shall be paid a minimum of two (2) hours and forty (4) minutes at the rate of time and one-half. If held on duty longer than two (2) hours and forty (40) minutes, they shall be paid at the rate of time and one-half on the actual minute basis.

The time of employees so notified to report at a designated time to perform work outside and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released at home station. The time of employees so

P. M. to 5:00 P. M. 'B's' earnings at \$1.04 per hour for this service will be as follows:

3:00 A. M. to 7:00 A. M.	4 hrs. at \$1.56 — \$6.24
7:00 A. M. to 8:00 A. M.	1 hrs. at 2.08 — 2.08
8:00 A. M. to 11:00 A. M.	3 hrs. at 1.04 — 3.12
11:00 A. M. to 12:00 noon (1 hour off for lunch)	1 hrs. at 1.56 — 1.56
1:00 P. M. to 4:00 P. M.	3 hrs. at 1.56 — 4.68
4:00 P. M. to 5:00 P. M.	1 hrs. at 2.08 — 2.08

Total \$19.76

(c) The time of employees so notified to report at a designated time to perform work outside and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released at home station. The time of employees so called to perform work immediately shall begin at the time called and end at the time they return to designated point at home station."

In the negotiations leading up to the consummation of the Memorandum of Agreement effective May 1, 1945, copy of which is attached hereto and made a part hereof (marked Carrier's Exhibit "B"), is was agreed by the parties to amend Rule 17 of the Agreement effective September 1, 1944 to read as follows:

"Rule 17

The hourly rates named herein are for an eight-hour day. All service performed outside of the regularly established work period by hourly rated employees shall be paid for as follows:

(a) Time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from starting time of the employee's regular shift. In the application of this paragraph (a) to new employees temporarily brought into service in emergencies, the starting time of such employees will be considered as of the time that they commence work or are required to report.

(b) Employees shall not be required to work more than two (2) hours, except in extreme emergency, after regular bulletined hours without being permitted to go to meals, and thereafter at four (4) hour intervals. Time taken for such meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes."

and the proposal of the representatives of the employees to change Rule 18 of the aforementioned agreement was withdrawn. Consequently, Rule 18 of the Agreement effective September 1, 1944, is still in full force and effect.

The submission of the alleged dispute set up in the Committee's ex parte Statement of Claim to the Board is without question an attempt on the part of the representatives of the employees to change the rules of the existing Agreement covering employees represented by the Brotherhood of Railroad Signalmen of America, and thereby obtain a rule which they failed to obtain in direct negotiations with the Carrier.

As the granting of new rules is a power which the Board does not possess under the law by which it was created, the contention of the Committee should be dismissed and the claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regular assigned Signal Maintainer Helper with headquarters at Fort Wayne, Indiana, assigned 7:00 A. M. to 12:00 Noon and 1:00 P. M. to 4:00 P. M. On May 16, 1946, Claimant was

called to work at 5:45 A. M. to assist in eliminating signal trouble in the Fort Wayne Yards. The work was not completed until after the starting time of his regular hours. Claimant was paid time and one-half on the minute basis from 5:45 A. M. to 7:00 A. M. He contends he should be paid for a minimum call under the Call Rule.

The Call Rule, Rule 18, Current Agreement, is as follows:

"Employees notified or called to perform work outside of and not continuous with the regularly assigned working hours shall report for duty promptly and shall be paid a minimum of two (2) hours and forty (40) minutes at the rate of time and one-half. If held on duty longer than two (2) hours and forty (40) minutes, they shall be paid at the rate of time and one-half on the actual minute basis.

The time of employees so notified to report at a designated time to perform work outside and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released at home station. The time of employees so called to perform work immediately shall begin at the time called and end at the time they return to designated point at home station."

Whatever interpretation may be placed upon this rule standing alone in a proper case, it is not the controlling rule here. Rule 17 (a), Current Agreement, as amended by Memorandum of Agreement effective May 1, 1945, specifically covers the situation here presented. It says:

"Time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from starting time of the employee's regular shift. In the application of this paragraph (a) to new employees temporarily brought into service in emergencies, the starting time of such employees will be considered as of the time that they commence work or are required to report."

It is a rule of contract construction that all provisions of a contract are to be given effect if it is possible to do so. In so doing, the specific will control the general provision, leaving the latter to operate in the general field not covered by specific provisions. In the present case, Rule 18 is the Call Rule, a general rule dealing with that subject. Rule 17 (a) deals with a specific situation and has the effect of excluding such specifically described situations from the operation of the Call Rule.

The Organization contends that the deletion of the following words from the rule previously in existence, indicates an intent to adopt the position now assumed by it:

"An employee so called less than two hours before his regular starting time, will be paid at time and one-half time from the time he reports until his regular starting time, and thereafter at straight time for the regular hours."

This could well be so but for Rule 17 (a), whether it is a new rule or a retained one. If a new rule, it merely has the effect of moving the rule from one portion of the Agreement to another; if it is a retained rule, it merely has the effect of eliminating a repetitious provision of the Agreement. In either event, Rule 17 (a) is controlling and the Carrier was correct in compensating Claimant in accordance with it.

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 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.