

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim that Signorman Horace Keefe shall be allowed one minimum call (two hours and forty minutes, at the time and one-half rate) for call received at 6:00 P. M., Monday, January 10, 1949; and one minimum call for call received at 5:00 P. M., Tuesday, January 11, 1949.

(b) Claim that Assistant Signorman R. E. Maloney shall be allowed one minimum call (two hours and forty minutes, at the time and one-half rate) for call received at 5:00 P. M., Monday, January 10, 1949; and one minimum call for call received at 5:00 P. M., Tuesday, January 11, 1949.

EMPLOYEES' STATEMENT OF FACTS: The regularly established working hours of Signorman Horace Keefe and Assistant Signorman R. E. Maloney are from 8:00 A. M. to 4:30 P. M. daily, except Sundays and holidays, with thirty minutes for lunch.

On January 10, 1949, Signorman Horace Keefe was called at his home at 6:00 P. M., one hour and thirty minutes outside of his regularly established working period, and directed to report for extra duty at 9:00 P. M. that date.

On January 11, 1949, Mr. Keefe was called at his home at 5:00 P. M., thirty minutes outside his regularly established working period, and directed to report for extra duty at 8:00 P. M. that date.

January 10, 1949, Assistant Signorman R. E. Maloney was called at his home at 5:00 P. M., thirty minutes outside his regularly established working period, and directed to report for extra duty at 9:00 P. M. that date.

January 11, 1949, Mr. Maloney was called at his home at 5:00 P. M., thirty minutes outside of his regularly established working period, and directed to report for extra duty at 8:00 P. M. that date.

There is an agreement, effective May 1, 1947, between the parties to this dispute.

Rule 12 (c) of that agreement reads as follows:

"Employees notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum

Your Honorable Board has held on many occasions that when the rule is clear and unambiguous the express wording of the rule will apply. A number of leading cases were quoted in our Docket CL-5797 with the Brotherhood of Railway Clerks now before the Third Division.

Conference was never requested by the Employees on this case, therefore, the Carrier requests the right to make further reply after the Ex Parte Submission is received.

All of the above has been handled in correspondence submitted herein or in telephone conversation with the designated representative of the Employees.

OPINION OF BOARD: Signalman Horace Keefe and Assistant signalman R. E. Maloney worked regular established hours from 8:00 A. M. to 4:30 P. M. daily except Sundays and holidays, with thirty minutes off for lunch.

Because of icy conditions existing prior to and on January 10, 1949 Keefe received a telephone call at 6:00 P. M. to report for extra duty at 9:00 P. M.

On the same date Maloney received a telephone call at 5:00 P. M. to report for extra duty at 9:00 P. M.

On January 11, 1949 the icy conditions continued to exist. Keefe and Maloney received a telephone call at 5:00 P. M. to report for extra duty at 8:00 P. M.

Keefe and Maloney respectively claim one minimum call of two hours and forty minutes at time and one-half rate for each day called.

Rule 12(c) of their Agreement with their employer provides:

"Employees 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. All time in excess of two (2) hours and forty (40) minutes will be computed at the rate of time and one-half on the actual minute basis.

Time of employees notified in advance will begin at the time required to report and end at the time released. Time of employees called will begin at the time called and end at the time they return to designated point."

The Claimants filed notice of intent to submit the dispute to this Board on November 27, 1951.

The Carrier claims this dispute is barred by laches.

No time limit rule is involved in these claims.

We cannot agree with the contention of the Carrier. The claims were handled on the property and when no Agreement could be reached, the Carrier was notified by letter dated June 8, 1949 from the Grand Lodge that the claims would be submitted to the National Railroad Adjustment Board, Third Division, as promptly as possible, and that all communications regarding the claim should be handled with the Grand Lodge. In the light of this letter the Carrier could not be placed in a position of prejudice so as to work a disadvantage to it. The Carrier knew that these claims were to be submitted.

The doctrine of laches cannot be invoked in this case.

The Carrier further contends that the Claimants were "notified" and not "called" under Rule 12(c), admitting that if they were "called", then the claims would be valid, but if "notified", then the claims should be denied.

The Claimants contend that notification as used in Rule 12(c) can only be given during the regular assigned working hours of the employees. If the Carrier needed the employees for extra work and they were contacted after their regular assigned hours, then they were "called" under the rule and are to be paid from the time of call.

We are required to take the Agreement as it is written and cannot rewrite it by interpretation nor by interpretation put in that which the parties have left out.

That portion of Rule 12(c) "Time of employees notified in advance will begin at the time required to report * * *," does not require notification during the regular assigned working hours. Under the Agreement as written, notification can be given at a reasonable time in advance of the hour to report for extra duty. The overtime rate to be computed from the hour of reporting. We cannot read into the last cited portion of Rule 12(c) the contention of the Claimants.

That portion of Rule 12(c) "Time of employees called will begin at the time called * * *," requires that the Carrier shall pay from the time of the call when the employees must report immediately. If the employee is not given a notice in advance with a reasonable length of time prior to the hour of his required reporting for extra duty, then he is "called" under Rule 12(c).

Since the Agreement does not define either "called" or "notified", we must give these words their common everyday meaning.

"Call" is defined in Webster's Dictionary—"To summon to a particular duty, office, or employment." "Summon" is defined—"To issue a call to convene. To bid to come. To send for." Call therefore denotes immediacy or urgency. "Notified" is defined by Webster's Dictionary—"To give notice of. To inform." Notified therefore denotes a warning or a notice of more formal nature, with time elapsing between the notice and the action to be taken by the notice.

The Carrier notified the Claimants to report under Rule 12(c).

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois this 18th day of July, 1952.