Award No. 7718
Docket No. SG-7423

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO AND NORTH WESTERN RAILWAY COMPANY AND CHICAGO SAINT PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago and North Western Railway Company and the Chicago, Saint Paul, Minneapolis and Omaha Railway Company that:

(a) The Carrier violated the terms of the Agreement of August 21, 1954 between the railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the Employes' National Conference Committee, Fifteen Cooperating Railway Labor Organizations, which we are a party to, when it adjusted the rates of the monthly-rated employes on the basis of Article II, Section 2 (b), instead of Article II, Section 2 (a), of said Agreement.

(b) All employes covered by Rules 20 (d), 35 (c-6), and 59 (b) of the Signalmen's Agreement with the Chicago and North Western Railway Company and employes covered by Rule 3 (b-1) of the Signalmen's Agreement with the Chicago, St. Paul, Minneapolis and Omaha Railway Company have their monthly rates adjusted effective May 1, 1954, by adding the equivalent of 56 pro rata hours to their annual compensation instead of the equivalent of 28 pro rata hours as is now applied.

EMPLOYES' STATEMENT OF FACTS: Instructions were issued by the Carrier to all monthly-rated Signalmen to adjust their monthly rates, effective May 1, 1954, by adding 2⅓ hours per month to the 194⅝ hours provided in Rules 20 (d), 35 (c-6) and 59 (b) of the Chicago and North Western Railway Company Agreement and Rule 3 (b-1) of the Chicago, St. Paul, Minneapolis and Omaha Railway Company. This adjustment was in accordance with provisions of Article II, Section 2 (b), of the August 21, 1954 Agreement between the Carriers' Conference Committees and the Employes' National Conference Committee.

A protest to these instructions was made by the General Chairman in a letter to Mr. T. M. Van Patten, Director of Personnel, as follows:

gency Board, which was appointed by him to investigate the dispute. The carrier wishes to point out in this connection that the Emergency Board report was not accepted by the employes in disposition of the disputes which resulted in the appointment of the Emergency Board, but that such disputes were separately settled by agreement between the conference committees and the employes and that insofar as the question here concerned is involved, the settlement actually made specifically provides that monthly rated employes whose hours are computed on 169⅓ hours per month shall have their rate increased by one amount and other monthly rated employes by another amount. In this case the employes do not come under the provisions of 2(a), but under the provisions of 2(b). Adjustment having been made in accordance with the clear provisions of the controlling agreement, it is the position of the carrier that this claim must of necessity be denied in its entirety.

All information contained herein has previously been submitted to the employes during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute.

OPINION OF BOARD: This dispute involves the proper application of Section 2 of Article II of the National Agreement to certain employes of the Carrier who are described in the claim. Section 2 reads as follows:

> "(a) Monthly rates, the hourly rates of which are predicated upon 169⅓ hours, shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The hourly factor will thereafter be 174 and overtime rates will be computed accordingly.
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> Weekly rates that do not include holiday compensation shall receive a corresponding adjustment.
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> (b) All other monthly rates of pay shall be adjusted by adding the equivalent of 28 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The sum of presently existing hours per annum plus 28 divided by 12 will establish a new hourly factor and overtime rates will be computed accordingly.
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> Weekly rates not included in Section 2 (a) shall receive a corresponding adjustment."

There is no dispute as to essential facts. The employes named in the claim have an hourly rate based upon 194⅝ hours per month. This 194⅝ hours figure does not include any holidays; rather, the hours over and above 169⅓ which are credited to these employes appear to be based upon a daily allowance of an additional hour for traveling.

Petitioner contends that the intent of paragraph 2 (a) of the National Agreement was to grant to all monthly paid employes the evquivalent of seven paid holidays. It is contended that the figure of 169⅓ hours which is used in Section 2 (a) is merely an example, and was not intended to exclude from the benefit of that section employes whose hourly rates are based upon figures other than 169⅓ hours, but which do not include holiday pay. Section 2(b) of the National Agreement, it is contended, deals with figures which already include some of the 7 paid holidays; not to those which do not include any holiday pay. Therefore, Petitioner argues, it was a violation of the National Agreement for the Carrier to pay the employes involved 28 additional hours under Section 2(b) rather than 56 additional hours under Section 2(a).

Carrier, on the other hand, insists that both Section 2(a) and 2(b) are completely clear and unambiguous; that Section 2(a) provides specifically that only monthly rates, the hourly rates of which are predicated upon 169⅓

hours, shall receive 56 additional hours, thus changing the hourly factor to the specifically mentioned figure of 174. All other monthly rates, as specifically provided by Section 2(b), are to be adjusted only by an additional 28 hours; and since 194⅔ hours is an "other rate" than 169⅓ hours, Carrier contends, the rates of the employes involved in this claim were properly adjusted by the addition of 28 hours as provided in Section 2 (b).

Petitioner's interpretation of the intention of Sections 2(a) and 2(b) is based upon the report of Emergency Board No. 106, out of which the National Agreement grew. Unquestionably, there is support in the Emergency Board report for Petitioner's argument that the intention of the Emergency Board was to provide monthly employes with pay for holidays equivalent to the holiday pay it was recommending for hourly paid employes; and that this recommendation was not necessarily limited to employes whose monthly rate was computed on the basis of 169⅓ hours. But it is clear that the parties in negotiating the National Agreement did not attempt in Article II merely to reduce to writing the recommendations of the Emergency Board. For instance, whereas the Emergency Board recommended that monthly employes who were getting no holiday pay should receive pay which would include on an annual average the approximate number of the holidays that would be expected to fall in the work days of a work week, the parties in Section 2 (a) provided that such employes should receive pay for seven holidays; and, in addition, the parties reached agreement that all monthly rates of pay other than those predicated upon 169⅓ hours should receive an additional 28 hours annually, although no basis for this figure is found in the Emergency Board report either.

Those provisions as to additional pay for monthly rated employes are clear and unequivocal—there is no ambiguity in either of them. It would be both impossible and improper for this Board to attempt to divine how and why the parties agreed upon 56 hours in paragraph 2 (a) and 28 hours in paragraph 2(b), rather than providing that all monthly rated employes receive whatever additional compensation is necessary to give them the equivalent of five paid holidays, which would conform to the recommendation of the Emergency Board. In order to sustain the claim, we would have to place a meaning upon the language of Sections 2 (a) and (b) other than that which is clearly and unambiguously expressed therein. According to many awards of this Division, this would be contrary to our proper function, which is to apply the rules as they have been written by the parties and not to look beyond the language of a rule when it is plainly and unambiguously expressed.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1957.