

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railroad:

(a) That the Carrier did not properly apply Article II, Section 2, of the August 21, 1954 National Agreement to its monthly-rated employees.

(b) That Foremen of Maintainers monthly rate be adjusted starting May 1, 1954, by adding the equivalent of 56 straight-time hours to their annual compensation instead of the 28 hours as was applied.

(c) That Signal Gang Foremen's monthly rate be adjusted in the same manner as claimed in (b).

(d) That the Signal Shop Foreman's monthly rate be adjusted in the same manner as claimed in (b).

EMPLOYEES' STATEMENT OF FACTS: In applying the provisions of the August 21, 1954 National Agreement to its monthly-rated employees classified as Foreman of Maintainers, Signal Gang Foreman, and Signal Shop Foreman, the Carrier increased the annual basic hours of these classifications by 28 hours instead of the 56 hours as provided in Article II, Section 2(a), which reads:

"Section 2(a). Monthly rates, the hourly rate of which are predicated upon 169 $\frac{1}{2}$ 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.

Weekly rates that do not include holiday compensation shall receive a corresponding adjustment."

The Carrier's action in this instance was protested, and claim was filed on November 1, 1954, which was denied, and the General Chairman then appealed the claim to the highest officer on December 22, 1954, who denied the claim on January 20, 1955.

the Board's recommendations. And, it is clearly apparent that since the Board made no recommendation with respect to monthly rates comprehending more than 169½ hours per month, the committees agreed upon Section 2(b), "as a matter of equity and justice," as it appears in Article II—HOLIDAYS of the August 21, 1954 Agreement. There is no authoritative proof that can be produced to show that when Section 2(b) was negotiated, the basic agreement between this Carrier and the petitioning organization was discussed in any manner whatsoever with a view that the employes thereunder should receive special consideration to the exclusion of all other employes similarly situated on other carriers. If this had been the intention of the parties, proper language would have been supplied to so indicate. There is no such language.

The petitioning organization participated in these negotiations and it knew then, as it knows now, that the monthly rates of Foremen of Maintainers, Signal Gang Foremen and Signal Shop Foremen comprehend more than 169½ hours per month. Therefore, it must be presumed that all argument of the petitioning organization, as well as, the other participating organizations is merged into Section 2(b) as negotiated. If equity and justice, using the words of the Petitioner, were considered by the negotiating parties it was treated by them as it appears in the rule. It should not now be heard to complain. See Third Division Award 6856.

The provisions of Section 2(b) are so clear that they cannot possibly be construed to mean that under certain conditions 28 hours will apply and under other conditions 56 hours will apply. The manifestations of the parties are spelled out in the rule as it is written. And this being so, parol evidence is of no value and cannot be considered here.

The Carrier submits that the terms of Section 2(b) of Article II of the August 21, 1954 Agreement were properly applied to the claimants in the light of the applicable rules herein referred to. Because of these facts, it is clear the claim of Petitioner is not supported by the rules as agreed to between the parties.

As shown hereinbefore, the claim represents nothing more than a plea for a condition which the Petitioner has failed to acquire through negotiations. Therefore, in accordance with the rules and authorities cited, the Carrier submits the claim is without merit and should be denied.

All data contained herein are known to or have been discussed with the Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made that the Carrier failed to properly interpret and apply Section 2 of Article II of the National Agreement of August 21, 1954. Request is made that the monthly rate for Signal Gang Foreman and Signal Shop Foreman be adjusted by adding the equivalent of 56 straight-time hours rather than the equivalent of 28 hours to their annual compensation.

The Organization took the position that Section 2 (a) of Article II, which pertains to holidays, contemplates the addition of the equivalent of 7 holidays, or 56 hours to the annual compensation of the monthly rated positions for the reason that in establishing such basic monthly rate no consideration or allowance was made for such 7 holidays. It was asserted that 28 hours equivalent was intended to apply to all other monthly rated employes.

The Respondent asserts that section 2 (b) rather than 2 (a) of Article II applies to the employes here involved for the reason that Section 2 (a) applies only to those employes whose monthly rate comprehended 169½ hours, while Section 2 (b) applies to those employes whose monthly rates, as here, comprehended more than 169½ hours.

Sections 2 (a) and 2 (b) of Article II provide as follows:

"Section 2(a). Monthly rates, the hourly rates of which are predicated upon 169 $\frac{1}{2}$ 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.

"Section 2(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.

"Weekly rates not included in Section 2(a) shall receive a corresponding adjustment."

In Award 7718 we stated:

"Those provisions as to additional pay for monthly rated employees 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 employees 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."

What was true there is likewise true here, so therefore, these claims lack merit.

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

That the parties waived oral hearing thereon;

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 the Carrier did not violate the effective Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1957.