Award No. 12468
Docket No. SG-11938

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific Railroad Company — Fort Worth and Denver Railway Company (Burlington-Rock Island Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company, that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 23 and the forty-hour work week rule when, beginning January 26, 1959, it required Signal Maintainer John F. Aust to work excessive hours because of the operation of a mannix plow and sled without allowing him additional compensation.

(b) The Carrier should now be required to compensate Signal Maintainer Aust for all overtime he worked beginning January 26, 1959, while performing work incidental to the operation of a mannix plow, claim to continue as long as a mannix plow is operated on the Joint Texas Division.

(c) The Carrier should also compensate all other Signal Maintainers for excess amounts of time they were required to work because of the operation of a mannix plow, claim to continue as long as a mannix plow is operated on the Joint Texas Division. [Carrier's File: Jt SG-3.]

EMPLOYES' STATEMENT OF FACTS: Mr. John F. Aust is the incumbent of a signal maintenance position at North Zulch, Texas. He is compensated on a monthly basis and ordinarily works eight (8) hours per day, five (5) days per week.

During April, May and June, 1958, a Mannix plow was operated over Mr. Aust's territory and that caused him to work an excessive amount of hours outside of his regularly assigned hours, resulting in a claim that was settled on the property.

be tantamount to adding a new provision to the contract. It is elementary that the Board has no authority to do this. The adoption of a practice of broadening or extending the terms of contract by a tribunal vested with the power to decide a dispute arising thereunder will inevitably lead to confusion and uncertainty, and ultimately to injustice to both parties.

The claim in this case cannot be sustained without extending the terms of contract. The Third Division in Award 2622 stated:

> "An elementary rule applicable to the construction of all contracts and agreements is that the rights of the parties thereto are to be determined by the language to be found in the instruments themselves. Otherwise stated, contractual rights are to be determined from the four corners of the agreement executed by the parties."

Since there is absolutely nothing in the agreement providing for overtime pay on the regularly-assigned five work days for monthly-rated signalmen who are involved in this claim, an award denying these claims must be rendered.

The failure of the Petitioner to comply with Section 2, Second, of the Railway Labor Act and Circular No. 1 of this Division directs the dismissal of this case. If this dispute should reach consideration as to merit, then for reasons advanced, it is entirely without rule support, and the Board is requested to deny it in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. It was the contention of the Claimants that the Agreement was violated when the Carrier required the Signal Maintainer to work in excess of eight hours per day without allowing him compensation under Rule 14, Overtime.

The Carrier advanced the contention that as the Claimant was a monthly rated employe Rule 23 applied to his compensation. The Carrier also argued that as no conference was held on the property regarding the dispute this Board lacked jurisdiction to adjudicate the matter.

An examination of the record reveals that no conference was held by the parties on the property prior to this appeal. This fact was not disputed in the record.

Thus we are of the opinion that the contention of the Carrier has merit. That under the Awards of this Board and specifically Award 12290 a conference on the merits, prior to appeal, is necessary in order for this Board to assume jurisdiction of the dispute.

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;

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 lacks jurisdiction in this dispute.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.