

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmens' Agreement effective April 1, 1947, (reprinted including revisions) April 1, 1958, particularly Rule 71.

(b) Messrs. R. W. Zenker, G. S. Phipps and H. L. Smith be paid for five (5) hours at their overtime rate for completing and returning the examination given to the above-named employes by Foreman A. Kenoyer "Questions for Examination of New and Promoted Employes in the Maintenance of Way Department" on their own time. [Carrier's File: SIG 47-5; S-71-1-101]

EMPLOYEES' STATEMENT OF FACTS: Under date of October 21, 1960, the Carrier's Signal Supervisor, Mr. R. G. Hickerson, addressed the following letter (file 011-2) to thirty-eight (38) named persons, including the Claimants:

"Enclosed is Form CS-2186-K 'Questions for Examination of New and Promoted Employes in the Maintenance of Way Department'.

Please complete Questions 1 through 40 and 84 through 102; also, please complete Page 3 and sign on Page 14.

Return questionnaire to this office as promptly as possible."

On October 24, 1960, the Brotherhood's Local Chairman, Mr. R. P. Smick, wrote to Signal Supervisor Hickerson and requested that instructions be issued that signal employes be permitted to write the book of rules examination on Company time as provided in Rule 71 of the Signalmen's Agreement. The Local Chairman's letter is Brotherhood's Exhibit No. 1 and Mr. Hickerson's reply of October 25, 1960, is Brotherhood's Exhibit No. 2.

As indicated by his letter of October 25, 1960, the Signal Supervisor did not grant the Local Chairman's request. The Claimants subsequently wrote this examination on their own time so, on November 15, 1960, Local Chairman Smick presented a claim (Brotherhood's Exhibit No. 3) on their behalf for five (5) hours at their respective overtime rates of pay. Signal Supervisor

None of the men involved ask me, at any time, for time to make out the questionnaires. If they had done so, I would have allowed them the time. G. S. Phipps had his questionnaire returned three times for correction and each time he was allowed time for correcting it."

It is clear, from a review of the record in this dispute that Claimants herein were not required to complete the subject form on their own time. Further, even if this had been done, Rule 71 does not provide the penalty claimed. In this connection, insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of Awards of this Division, some of the latest being 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

CONCLUSION: Carrier requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: In this dispute, the Carrier submitted an examination to the Claimants to complete and return. The Petitioner contends that the Claimants should have been allowed to complete the examination during their regular working hours.

The Agreement in effect between the parties of this dispute contained Article 71 which is cited below:

"Rule 71. EXAMINATION. Such examinations or re-examinations as employees may be required to take, shall, if possible, be conducted during regular working hours without deduction in pay therefor."

On January 25, 1956 the Carrier made the following ruling in regard to this rule:

In compliance with that rule, employees who are required to take such examination in the future, and who indicate a desire to complete the examination during regular working hours, should be allowed to do so if possible.

This ruling attempts to establish a condition precedent before Rule 71 becomes effective. This the Carrier cannot do.

The record discloses that Claimants could have completed the examinations during regular working hours; therefore they should have been permitted to do so. However, the Petitioner has failed to show that the Claimants were prevented by Carrier from completing the examinations during regular working hours or that Carrier directed the Claimants to complete the examinations during their off duty hours.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1965.