Award No. 14039
Docket No. SG-14213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Burlington and Quincy Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 11, 13, 16 and 27, when it failed and/or refused to properly compensate the employes in Signal Gang No. 135 for overtime service they performed on Friday, March 2, 1965 — and subsequently denied them forty (40) hours of work in the week beginning March 5, 1962.

(b) Signalmen A. J. Geist, D. L. Adkison and J. James, and Signal Helper B. C. Hartley be compensated five and one-half (5½) hours each at the punitive rate for overtime service performed on Friday, March 2, 1962.

(c) The above-named Claimants each be compensated four (4) hours at the pro rata rate for the time they were required to suspend work to absorb overtime during the week beginning March 5, 1962. [Carrier's File: C-60-62]

EMPLOYES' STATEMENT OF FACTS: During the period covered by this claim, Claimants were assigned to Carrier's Signal Gang No. 135 with regularly assigned work hours from 7:00 A. M. to 12:00 Noon, and from 1:00 P. M. to 4:00 P. M. Their assigned work week was Monday to Friday, inclusive, with Saturday and Sunday as rest days.

Under the rules of the schedule agreement, gang employes may elect to make up time outside of regularly assigned working hours, if conditions permit, for the purpose of enabling them to go on week-end trips to their homes.

At the beginning of their work week which started February 26, 1962, Claimants elected and were granted permission to make up time outside

"Rule 36(a) recognizes in its working and contemplation that situations will arise when in the judgment of Management conditions will not permit of affording employes opportunities to make weekend trips home. It makes no provision for any payment to the employes when such trips are not afforded to them."

Rule 27 in this case makes no provision for any payment for time lost by employes making weekend trips home. In fact, it specifically provides that such time lost will not be paid for. The time lost by claimants in the week ending March 9 resulted solely from their leaving their jobs after working only four hours on the 9th. The rule makes no provision for paying claimants punitive rates for working the four hours within their regularly assigned hours on March 2. On the contrary, the rule clearly and explicitly provides that time lost account making weekend trips will not be paid for by the Carrier, and any time worked outside of the assigned hours making up time will be paid at the regular rate. The Carrier complied completely and strictly with the provisions of Rule 27, and the claim must be denied.

In summary, the Carrier respectfully submits that:

1. Claimants, of their own volition chose to work one hour a day for four days outside of their regular assigned hours in order to make up time so they could make weekend trips home.

2. During the two weeks ending March 9, claimants worked a total of 81½ hours. They were paid 80 hours at pro rata rate and 1½ hours at time and one-half rate. (Hartley only worked 73½ hours, having laid off on February 26.)

3. On the first claim date, March 2, claimants worked 9½ hours, and were paid 8 hours at pro rata rate and 1½ hours at punitive rate — they actually only worked 1½ hours outside their regularly assigned hours.

4. On the second claim date, March 9, claimants worked only four hours — having left the job of their own volition after the expiration of the fourth hour in order to make weekend trip home.

5. Rule 27 provides how employes will be compensated when they elect to make up time for the purpose of making weekend trips home. Claimants were compensated in strict conformity with the provisions of Rule 27.

6. There is no provision in the collective agreement that would require the carrier to pay claimants at the punitive rate for the four hours they worked within their regularly assigned hours on Friday, March 2. Neither is there any provision to require payment of eight hours on March 9 on which date claimants left the job of their own volition after working only four hours.

If the Board will give consideration to these clear facts and relate them to the provisions of the Agreement, particularly Rule 27, there can be no decision but denial of the claim in its entirety.

OPINION OF BOARD: The facts are not in dispute. Petitioner contends that the Carrier violated Rule 27 and other rules of the Agreement by not properly compensating the Claimants for the weeks ending March 2, 1962 and March 9, 1962.

Rule 27 reads:

"MAKE-UP TIME

Rule 27. When the majority of employes in a gang elect, and conditions permit, they may make week-end trips to their homes, except that such permission may be denied in cases of emergency or rush projects. Assigned time lost account making such trips will not be paid for; however, men may make up such lost time either before or after making such trips, outside regular hours of assignment at regular rate."

Claimants had elected to make week-end trips to their homes on Friday, March 2, 1962. They so notified Carrier and performed "make-up time" of one hour each on Monday, Tuesday, Wednesday, and Thursday, February 26, 27, 28 and March 1. An emergency arose on Friday, March 2. Claimants were not released early; instead, they worked until 5:30 P. M. that day, one and one-half hours beyond their regular quitting time. They were each paid for hours "make-up time" at straight time in addition to their regular assigned straight time hours and time and one-half for the additional one and one-half hours worked on Friday. No "make-up time" was performed during the following week. They went home for week-end trips on Friday, March 9, 1962, leaving four hours early.

Rule 27 is a special rule, dealing with a specific subject. Employes alone elect to make week-end trips. Carrier may not order them to do so. Carrier has no right to refuse such election if "conditions permit" and may deny them that right only "in cases of emergency or rush projects." Emergencies are uncertain. They may arise at any time. Neither the Employes nor the Carrier have any control.

"Make-up time" worked prior to an emergency is not penalty time. That work was performed at the request of the Claimants under Rule 27. It is not the intent of this Rule that the employes who work such "make-up time" should be paid at the penalty rate when they do not leave early that week because of an emergency which required their services. There is no evidence in the record that the parties intended otherwise. In the absence of such evidence, the language in Rule 27 must be given its normal and common meaning and since this is a special rule it takes precedence over the overtime provisions in the Agreement. The Claimants were properly paid for the week ending March 2, 1962.

On March 5, 1962, Carrier's Signal Supervisor refused to approve the overtime statement submitted by Claimants for the week ending March 2, 1962 and wrote:

> "As previously related, your men cannot receive overtime rate for regular assigned hours. **The time made up last week can be used this week and not necessary to make up any time this week."**
> (Emphasis ours.)

This is not a directive or an order to Claimants to make their week-end trips on Friday, March 9, 1962. The positions were not blanked for the last four hours on Friday, March 9. There is no evidence in the record that Carrier at any time directed Claimants to leave early on that Friday. Petitioner relies solely on the March 5th statement of the Signal Supervisor. That merely states that the make-up time of the previous week "can be

used this week." The word "can" has no mandatory connotation. It is a permissive word. If Claimants wanted to work their full scheduled hours on that Friday, the Carrier would have been obliged to permit them to do so. Instead, they elected to leave four hours before their regular quitting time to make their week-end trips. They were properly paid for the hours worked that week.

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 has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.

LABOR MEMBER DISSENT
TO
AWARD NO. 14039 Docket NO. 13892
REFEREE JAMES E. CONWAY

It is abundantly clear that here, as in Award No. 14038, the Neutral completely ignored the prima facia case advanced by the Organization and sided with the Carrier's meritless and unsupported assertions.

The Carrier stated that the Organization lost nothing. However the Neutral ignored the fact that the Carrier allowed the Electrical Craft forces to become depleted and rather than comply with the parties governing Agreement they simply transferred the work from one craft to another.

The Neutral furthermore completely ignored the following facts:

1. That there were four full time Electrical Craft positions abolished. This work cannot be considered incidental work. These were eight hour a day positions, not a portion of a larger work assignment as identified in the Incidental Work Rule. These positions were "full time" and not "incidental work".

2. While the Carrier alleged that they "created four mobile maintenance positions with better days off," after repeated requests from the Organization to produce and/or identify the positions by bulletin they provided nothing to support their meritless allegation.

3. The Employees cited the previous Electrical Craft job bulletins which read in part:

   "SUCCESSFUL BIDDER MUST BE CAPABLE OF HANDLING THE DUTIES ASSIGNED TO THE JOB AND ANY OTHER WORK ASSIGNED IN ACCORDANCE WITH THE AGREEMENT OF THE CRAFT."

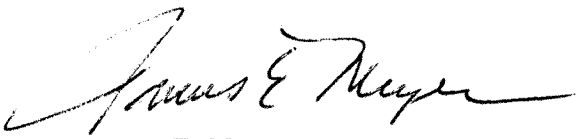
The job bulletin was to the Electrical Craft alone and it would seem obvious that the Craft Agreement referenced therein would be the Agreement between the Carrier and the Electrical Craft. That Agreement clearly embodies that the Electricians' Classification of Work Rule, which includes electrical maintenance and inspections, is what is at bar in this dispute.

Notwithstanding the aforementioned, the Neutral interjects the argument of the parties Rule 93 - Jurisdiction Rule. The Rule 93 argument was never made on the

property by the Carrier, but now here we have the Neutral making that argument for the Carrier. It was only within the Carrier's submission that the jurisdictional argument was introduced. But the Neutral addresses the argument even though the record was closed prior to its introduction, a fact brought to Neutral's attention during the hearing.

There was no need for the Organization to request a time study. These were full-time positions that were abolished and not some portion of a task or work assignment that is piecemealed as set forth in the Incidental Work Rule.

It is submitted for the record that this Award is palpably erred and has no precedential value either in this forum or any other forum created under the provisions of the Railway Labor Act.



James E. Meyer
Labor Member