



Award No. 14974

Docket No. SG-14490

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement, especially Rule 7(b), when on October 22, 1962, and various dates subsequent thereto, it required Maintainer B. L. Burke and Helper F. B. Raulerson, assigned to Section No. 6, with headquarters at Titusville, Florida, to suspend work during regular working hours to absorb overtime.

(b) The Carrier now compensate Maintainer B. L. Burke and Helper F. B. Raulerson at their respective punitive rates of pay in addition to their respective pro rata rates of pay as follows:

Oct. 22, 1962 - 8 hrs.; Oct. 23, 1962 - 8 hrs.; Oct. 24, 1962 - 8 hrs.;
Oct. 25, 1962 - 8 hrs.; Oct. 30, 1962 - 3 hrs.; Oct. 31, 1962 - 8 hrs.;
Nov. 1, 1962 - 8 hrs.; Nov. 5, 1962 - 8 hrs.; Nov. 6, 1962 - 8 hrs.;
Nov. 7, 1962 - 8 hrs.; Nov. 8, 1962 - 8 hrs.; Nov. 14, 1962 - 8 hrs.;

and for all subsequent hours that they were required to suspend work during regular working hours to absorb overtime; the amount of such subsequent time can be determined from the Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because the Carrier required Signal Maintainer B. L. Burke and Signal Helper F. B. Raulerson, both assigned to Section No. 6 with headquarters at Titusville, Florida, to suspend work on the positions to which they were assigned to perform work of assisting Signal Gang No. 2 to install centralized traffic control on Section No. 5.

As a result of this violation, General Chairman J. E. Dubberly filed a claim with Superintendent R. L. Stephens on December 3, 1962. The claim asks that Claimants be paid at their punitive rates of pay in addition to their respective pro rata rates for all time that they were required to

one day and the beginning of the regular working hours of the following day, except when at least eight (8) continuous hours of sleeping car or hotel accommodations are available to the employee, which it is permissible for him to use, between the hours of 9:00 P.M. and 7:00 A.M. No compensation will be allowed for time actually traveling when eight (8) or more continuous hours of sleeping car accommodations are available between 9:00 P.M. and 7:00 A.M. When lodging accommodations are available at the point to which sent, no time will be allowed other than that consumed in traveling on trains, waiting for trains, or time actually worked between the end of the regular hours of one day and the beginning of the regular working hours of the following day. When employees are notified or called to leave their home station under this or the preceding rule, before or after their regular work period, they will be allowed one hour at pro rata rate as preparation time, except this shall not apply to Maintainers called to work on their assigned territory. Necessary actual expenses will be allowed while away from home station under this rule."

"RULE 13. TEMPORARY TRANSFER

An employee, when sent from home station to fill a temporary vacancy for one day, will be paid in accordance with Paragraph (a) of Rule 12. If for more than one day, he will be paid in accordance with Paragraph (b) of Rule 12. While filling such vacancy, he will be paid for the hours worked at the established rate for the position, except as provided in Rule 35(b), but at not less than his regular rate."

"RULE 35. RATES OF PAY

(b) The rate applying to an assistant signalman or assistant maintainer based on time in training as set out in Paragraph (a) of this rule shall not be increased because of his being required to relieve another assistant signalman or assistant maintainer who has completed a longer period of training."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were both assigned to Section No. 6 with headquarters at Titusville, Florida. On dates set out in the Claim, Claimants were assigned to perform work of assisting Signal Gang No. 2 to install centralized traffic control on Section 5 during their (claimants') regular working hours. The Organization contends that claimants were required to suspend work during regular working hours to absorb overtime, in violation of Rule 7(b) of Signalmen's Agreement, which is as follows:

"RULE 7.

(b) Employees will not be required to suspend work during regular working hours to absorb overtime."

All parties agree that the work in question was performed in the same seniority district and that the work was performed during Claimants' regularly assigned working hours.

Past awards have firmly established the principle that before the "suspension of overtime" rule (Rule 7(b) herein) can be applied, the claimant must prove:

1. That the work in question was suspended during the assigned work period; and
2. That the work in question was suspended for the purpose of absorbing overtime. (See Awards 14480, Dugan; 14080, Dorsey; 13893, 13811, Bailer; 13623, Hutchins.)

The record in this case is void of any evidence supporting either of these two conditions precedent. Too, the agreement contains no provision which would enjoin Carrier from assigning work as was done in this case.

Award 14242 (Perelson), citing Award 13192 (Coburn) in construing Rule 7(b), stated:

"To support the charge of Rule violation, the Employees must show that a Claimant has been required to perform the work of another position which, otherwise, would have to have been performed on an overtime basis by the incumbent of the latter position. Awards 7167, 5331."

Also, Carrier has the right to assign an employee to work at two locations even though the bulletin specified only one location (Awards 13201, Zack; 14242, Perelson).

Based upon prior awards interpreting the Rule in question herein (Rule 7(b)) in similar factual situations, we are compelled to deny this claim.

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 30th day of November 1966.

DISSENT TO AWARD NO. 14974, DOCKET SG-14490

The Majority (Carrier Members and Referee) in Award No. 14974, in order to reach their erroneous conclusion, rely on Awards involving crafts other than Signalmen, whose agreements with the carriers are distinguishable and in no manner affect the working conditions of Signalmen. The only Award cited which involves Signalmen (14242) is shown by our dissent to be in error.

Award No. 14974 can be no better than that upon which it relies, and it, therefore, being in error, I dissent.

W. W. Altus
For Labor Members
12/30/66