



Award No. 15873
Docket No. SG-15652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al, that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 33 and the latter part of Rule 27(a), when Signal & Electrical Supervisor F. H. McIntyre, Danville, Kentucky, changes assigned working hours on certain occasions to prevent the payment of overtime; and, on May 28, 1964, changed the working hours of Mr. K. G. Reed, Maintainer at Lawrenceburg, Kentucky, from his regular assigned working hours of 8:00 A.M.-5:00 P.M., to 6:00 A.M.-3:00 P.M., depriving him of two hours at the overtime rate of pay, and reduced his regular working time by the two hours.

(b) Mr. K. G. Reed be compensated at his overtime rate of pay for two (2) hours each day on May 28 and 29, and June 1, 2, 3, 4, 5, 8, 9, 10, 11 and 12, 1964, when he was required to begin work at 6:00 A.M. and quit at 3:00 P.M. to avoid overtime prior to his regular assigned starting time, and he was deprived of working until his regular quitting time 5:00 P.M. on the days involved—a total of twenty-four (24) overtime hours. [Carrier's File: SG-20249]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose when Carrier unilaterally changed the assigned hours of a regular position in order to avoid the payment of overtime.

Mr. K. G. Reed is the regularly assigned Signal Maintainer on the Lawrenceburg, Kentucky section. His position—like one at Harrodsburg, Kentucky, and others within the seniority district—is bulletined to work from 8:00 A.M. to 5:00 P.M.

At 4:00 P.M. on May 25, 1964, Signal and Electrical Supervisor F. H. McIntyre advised Mr. Reed that the starting time of his work day was going to be changed. Later that day the Supervisor addressed a letter (page 2 of Brotherhood's Exhibit No. 1), to the Maintainer, stating the effective date of the change was to be Thursday, May 28.

Because Mr. Wilson was more familiar with these locations and how they should work, he was kept near this crossing gang at all times they were working.

By the time this T&S gang reached Mr. Reed's territory, the contractor had worked crossings far enough ahead of the T&S gang that he did not have to work as late each day. He completed his crossing stripping each day before 3 P.M. And since we did not have as many crossings to work each day the crossing work did not require as much of Mr. Reed's time as it did of Mr. Wilson's time. Therefore, since Mr. Reed was not needed as badly from 3 P.M. to 5 P.M. as he was 6 A.M. to 8 A.M., with proper notice his working hours were changed to 6 A.M. to 3 P.M. with one hour for noon.

It is very important that the nature of the work being performed on Mr. Wilson's territory be looked at closely. As the work began on Mr. Wilson's territory, the contractor doing the crossing work was being pushed to get these crossings finished ahead of the T&S gang reaching Harrodsburg. He had only a few days before the T&S gang would catch up with him, so he had to work late each day. This work required more of Mr. Wilson's time than it did of Mr. Reed's. Mr. Wilson's services were required every day from 8 A.M. until 5 P.M. But, only part of the time from 5 A.M. to 8 A.M. If he had not been needed to work from 3 P.M. to 5 P.M. each day, then his working hours would have also been changed to 6 A.M. to 3 P.M. I could not see that Mr. Wilson would be any more useful to company working different hours, so no time change was made.'

As I have previously pointed out, under Rule 32 of the signalmen's agreement, overtime hours are hours 'continuous with regular working hours'. Signal Maintainer Reed's assigned hours were not changed to avoid overtime, nor is there any basis for the interpretation which you have attempted to place upon the agreement. The monetary claim and demand are not supported by the agreement, and for these reasons, my prior declination of the same is confirmed."

The above quoted correspondence exchanged between the parties reflects the handling of the dispute on the property and the absurdity of the position taken by the Brotherhood in support of the claim.

OPINION OF BOARD: May 28, 1964, Carrier changed Claimant's regularly assigned working hours from 8:00 A.M. to 5:00 P.M. to 6:00 A.M. to 3:00 P.M. This change in his scheduled working hours existed over a time period of approximately three weeks; thereafter, Claimant's usual schedule of working hours was restored.

Rule 27 (a) of the Agreement of the parties reads, in pertinent part, as follows: "... Starting time of employees shall not be changed temporarily to avoid overtime nor without thirty-six hours' advance notice." We believe this is the key rule involved in the instant Claim.

The change in Claimant's hours was made while a T&S gang was working on Claimant's territory laying rail. The gang had as its starting time 5:00 A.M., and the Signal Maintainer (this grievant) was required to do certain work in connection with the signal equipment and track circuits while the rail was being laid. Briefly, it appears clearly that if Claimant's starting time had not been changed, he would have been called to work on the dates in question two hours in advance of his regular starting time and paid at the overtime rate of pay, i.e., at the rate of time and one-half.

The Carrier ably presented a variety of technicalities in defending this Claim, particularly in regard to the definition of "overtime." However, we do not believe Rule 32 of the Agreement was written to provide a definition of overtime—particularly an exclusive definition. We believe this rule was drafted for the purpose of prescribing a method of computation of overtime pay. It is undisputed that time worked in advance of and continuous with regularly assigned hours shall be computed on actual minute basis and paid for at the rate of time and one-half.

When the semantical arguments of Carrier are considered in the perspective light of realities, we find that in essence such argumentation is not persuasive.

After having reviewed the Record and Agreement, and having considered the argumentation presented by and in behalf of the parties, we are of the belief that the change in Claimant's regularly assigned hours was temporary in nature, and that it was made to avoid payment of the overtime rate of pay Claimant would have otherwise received during the time period covered by this Claim.

This Claim should be allowed and sustained as presented.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated by the Carrier.

AWARD

Claim allowed as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.