

Award No. 16673
Docket No. SG-17235

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE NEW YORK CENTRAL RAILROAD COMPANY
(New York and Eastern Districts (except B&A Division),
Grand Central Terminal, Troy Union Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Buffalo and East); the Grand Central Terminal; and the Troy Union Railroad Company, that:

(a) Carrier violated the current Signalmen's Agreement, and the November 20, 1964 Mediation Agreement, as amended, when it failed to pay G.C.T. Signal Maintainer J. J. McCarthy the equivalent of thirty-two (32) straight time hours' pay for working on April 1, 1966 — his birthday — and for changing from a first to a third trick assignment in accordance with instructions.

(b) Carrier be required to pay Signal Maintainer McCarthy, in accordance with Rule 27 of the Signalmen's Agreement and Article II, Section 6, of the November 20, 1964 Mediation Agreement, for a balance of eight (8) straight time hours. (He has been paid on two different occasions thus far for a total of twenty-four (24) hours.)
[Carrier's File: 114-B (SG 66.11)]

EMPLOYEES' STATEMENT OF FACTS: Mr. J. J. McCarthy is regularly assigned to work a position identified as 205 Relief Signal Maintainer at S.S. MO — Second Trick.

On April 1, 1966, his birthday, he was directed to work position 118 at SS MO on Third Trick. For such service on that day Carrier paid him eight (8) hours pro rata and eight (8) hours time and one-half — twenty (20) hours' straight time pay.

On April 25 Local Chairman Harold Pekary presented a claim to Signal Supervisor F. L. Buckley requesting an additional eight (8) hours' pay at the time and one-half rate. The basis for the claim was as follows:

- 8 hours at pro rata rate as birthday pay
- 8 hours at 1½ time rate for working on his birthday
- 8 hours at 1½ time rate for change of trick pay

rate in accordance with Article II, Section 6(g), of the National Agreement dated November 20, 1964 for working on his birthday holiday.

In other words, Mr. McCarthy was paid 16 hours at time and one-half (equalling 24 hours at straight time) for working on other than his regular shift on his birthday holiday. The claim presented is for the payment of an additional 8 hours at straight time rate for his birthday holiday.

The claim was originally presented to claimant's Signal Supervisor and thereafter appealed and denied in accordance with the appeals procedure in effect on this property. Carrier has reproduced as Carrier's Exhibit A the exchange of correspondence between the General Chairman and Carrier's highest appeals officer.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, an hourly rated employee, was regularly assigned to work Monday through Friday, his regular assignment being the Signal Maintainer's position at Signal Station "B" Grand Central Terminal, 8:00 A. M. to 4:30 P. M. On April 1, 1966, his birthday, he was directed to work another position on third trick. For service having been performed on that date, he was compensated for (8) eight hours pro rata and (8) hours time and a half, or a total of twenty (20) hours straight time pay. Carrier later paid him an additional (4) hours pro rata, thus making a total of 24 hours at the straight time rate.

Claim has been submitted citing Rule 27 of the Agreement and the Mediation Agreement of November 20, 1964. The basis for the claim is as follows:

8 hours at pro rata rate as birthday pay.

8 hours at 1½ time rate for working on his birthday.

8 hours at 1½ time rate for change of trick pay.

Both parties agree that Claimant was entitled to and did in fact receive eight (8) hours pay at the time and half rate for having been diverted from a regularly assigned second shift to a third shift. Such compensation is explicitly provided by Rule 27 a of the Agreement.

Having compensated Claimant at time and a half rate for changing his shift, and having compensated him at time and a half for work performed on his birthday, the Organization specifically bases its claim for eight hours pro rata on Sections 1, 3 and 6 of Article II of the August 21, 1954 Agreement, as amended. They argue that he would have received such pay whether or not he worked on April 1, 1966, and the fact that he did work, most assuredly should not disqualify him for this pay. We agree with Petitioner in this case. Claimant was entitled to pay under three separate Agreement rules, 27 a, 37 a, and the National Agreement. Having been paid in accordance with the provisions of the first two such rules, we can see no reason why he should not be compensated under the third. We will sustain the 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 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 Agreement was violated by the Carrier.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.