NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19757

THIRD DIVISION Docket Number SG-19625

Benjamin Rubenstein, Referee

PARTIES TO DISPDTE: (Brotherhood of Railroad Signalmen
(Chicago & Eastern Illinois Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and Eastern Illinois Railroad that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly a Letter of Understanding dated May 25, 1970, when it used Signal Maintainer Roger L. Deason and Signal Technician Maurice E. Hyde on C.T.C. construction work between Woodland Junction and Findlay, Illinois, on various dates during September 1970, without properly compensating them for such work.

(b) Carrier should now be required to compensate Messrs. Deason and Hyde es follows (specific dates and amounts of time each day were listed in handling on the property):

Deason: Four hours pro rata, and eighteen hours time and one-half.
Hyde: Four hours pro rata, and twelve hours time and one-half.

(Carrier's File: SG-7001)

OPINION OF BOARD: The issue before us involves en interpretation of Rule 70 of the existing agreement between the parties effective May 1, 1945, as affected by a letter of understanding between them, dated May 25, 1970.

Rule #70 of the Agreement provides that monthly rated employees shall not be given overtime pay "for time worked in excess of eight (8) hours per day." and that "no time be deducted unless the employee lays off of his own accord."

In May of 1970, the Carrier was installing a Centralized Traffic Control (CTC) system in the territory between Woodland Junction and Findlay, Illinois, a distance of approximately 103 miles, and wanted to use some monthly rated and other signal employees im the CTC Construction project.

On May 25, 1970, a letter of understanding, consisting of 3 pages, was entered into between the parties, paragraph 7 of which letter, reads:

"Monthly rated C & E I employees subject to the Signalmen's Agreement used on CTC Construction will be compensated, in addition to their monthly rate, at the pro-rata rate for the first four hours so used in excess of 40 in their work week; thereafter at the time and one-half rate for hours in excess of 44 in said work week."

During the month of September 1970, monthly rated employees Deason and Hyde worked part of their time on CTC work, resulting in a total of more than 40 hours per week. They seek extra compensation, pursuant to Section 7 of the letter of understanding of May 25, 1970.

Their claim was denied by the Carrier on the ground, that paragraph 7 intends to cover CTC work done after the regular 40 hours week, and in view of the fact that their work on CTC was done during the regular working hours, they are not covered by the letter of understanding. It bases its argument on the phrase "so used" contained in the paragraph.

We have consistently held, that where a provision of an agreement lends itself to different interpretations, unless the intent of the parties entering the agreement is proven by evidence, the provision must be given an interpretation, normally and logically applied to it.

In Award 11787 (Dorsey), we said, citing Award No. 6856:

"The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible..,."

In 14240 (Perelson), we said:

"In arriving at the intention of the parties, where the language of a contract is susceptible of more than one construction, it should be construed in the light of the circumstances surrounding them at the time it is made so as to judge the meaning of the words and the correct application of the language of the contract." (Similarly, Award No. 18064 (Quinn))

Rule #70 of the basic agreement between the parties is clear and unambiguous: monthly rated employees are not entitled to overtime, if they work mo than 40 hours per week, nor do they lose any pay, if they work less than 40 ho. unless they lay off on their own accord. This applies to their regularly assign jobs. The intent of it is to establish a quid-pro-quo, between hours lost, not of their own oooord, and overtime hours.

Neither of the parties, herein, presented evidence showing the purpose and intent of the letter of understanding of May 25, 1970. This, therefore, must be gathered from the contents of the letter and surrounding circumstances.

It is clear that:

1. The purpose of the letter was to amend the provisions of the agreement to permit the carrier to use monthly-rated employees covered by the Agreement between the parties, inclusive of Rule 70, for CTC work;

2. In consideration of said permission to use such employees in CTC work, the carrier agreed to change the no-overtime provisions of Rule 70;

3. While, under Rule 70 employees waived their overtime benefits, they were compensated for it by the "no loss time deduction" provisions;

4. Rule 70, did not intend to permit the carrier, to use an employee covered by it, for work, outside of his assigned job, for several hours a day, and then continue using him more than 40 hours per week on his assigned duties:

5. Under the above interpretation of Rule 70, the intent of paragraph 7 of the letter of understanding becomes clear and unambiguous: it permitted the Carrier to use employees covered by Rule 70 to work on CTC, but if "such" work in addition to the assigned work exceeded the 40 hour week, it was to be paid for, in addition to the regular weekly salary, as provided for in said paragraph. This is the only logical and possible interpretation of paragraph 7 of the letter of understanding. Any other interpretation would permit the Carrier to use employees on CTC for 40 hours, and then use them for additional forty hours on their own work, and avoid paying any overtime. This, clearly, without definite proof to the contrary, was not the intention of the parties.

The phrase "so used", must be interpreted as intending to mean that the number of hours over 40 per week, which were caused as a result of being "so used" (on CTC work), regardless of when, during the day or week they were "so used".

The above interpretation, however, must be limited to actual time worked on CTC. The record does not indicate, how many of the hours claimed, were actually on CTC work. If they were all on CTC, the employees' claims should be paid as requested. If the hours worked by them on CTC were less than the number of hours claimed, they should be paid overtime rates only for the CTC work.

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

The carrier violated the provisions of the letter of understanding, limited to the number of hours worked by claimants on CTC.

A W A R D

Claim sustained, as hereinabove provided for.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.