

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20208
Docket Number SC-19896

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago, Rock Island and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the **General Committee** of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

(a) Carrier violated the Signalmen's Agreement, particularly Rules 17 and 62, when it did not properly compensate Signal Maintainer D. O. Kidd for 5-6/12 overtime hours **worked** on March 18, 1971,

(b) Carrier should now pay to Mr. D. O. Kidd 5-6/12 hours time at his hourly overtime rate.

/Carrier's File: L-130-471/

OPINION OF BOARD: On **March** 17, 1971 a train derailment occurred at Missouri **Division** Junction, destroying a switch and a switch machine. A straight rail **was** installed on the 17th; on the 18th the switch was replaced and the Claimant Signal Maintainer installed a secondhand switch machine. If the switch machine had operated properly upon **installation**, the **installation** would have been completed within Claimant's regular hours. However, because of **im-**proper operation, the switch machine had to be dismantled, adjusted internally, and re-installed. As a result the Claimant worked **5½** hours beyond his regular hours to complete the job of installing the switch machine. The Claimant, a monthly rated employee, now claims overtime for the **5½** hours.

The pertinent **agreement** provisions, found in the third and fourth paragraphs of Rule 62, read as follows:

'RULE 62. MONTHLY RATED SIGNAL MAINTAINERS:

*** * * ***

No overtime is allowed for time worked in excess of eight (8) hours per day on the regularly assigned five (5) days **per week** the **employee** is **scheduled** to work, nor on the first scheduled rest day (6th day) of the work week or holidays; **on** the other hand, no **time** is to be deducted unless the employee lays off on his own accord.

"On the regularly assigned five (5) days per week the employee is scheduled to work, ordinary Maintenance and Construction work will not be required outside of their bulletined assigned hours. This does not apply to such travel time or work a Maintainer might **run** into when in completing a certain job worked on, during the day he might leave his headquarters or return thereto outside his regular assigned hours."

The **Employees** say the **5½** hours of disputed work involved "ordinary Maintenance and Construction work" as such term is used in the first sentence of the fourth paragraph of Rule 62; in consequence, the disputed work is governed by the part of such sentence which provides that "ordinary Maintenance and Construction work **will** not be required outside of...assigned hours." The Carrier's response is that it merely exercised its prerogative under the third and fourth paragraphs of Rule 62 to require a monthly rated signal maintainer to perform work that he "might run into" on a job which he had begun but not completed during his regular hours. **The** Carrier also says the work was not ordinary maintenance which could have been deferred, but resulted from a derailment of the previous day.

On the basis of the foregoing, and the whole record, we conclude that the work following Claimant's regular **hours** was work "run into" **within** the meaning of the second sentence of the fourth paragraph of Rule 62. **Thus**, irrespective of whether Carrier's urgency to **have** the **switch** installed was slight or great, the Carrier **is** not **required** to **pay overtime**. We are mindful that the nature of the fourth paragraph of Rule 62 is such that it could possibly be misused by the Carrier. We are also mindful that, in this case, a lengthy period was required to perform the work "**run** into" in completing a certain job. For these reasons we have studied the facts closely. We note though, that the **Employees** did not dispute that the work would have been completed within regular hours if all had gone well. Nor did the **Employees** contend that the Carrier could have foreseen the malfunctioning of the switch machine, that the Carrier had any knowledge about the machine's defects which would have relieved Claimant of the duty to complete the job, or that the job could have gone over until the next day. The **Employees'** Rebuttal does suggest that Claimant made repairs to the second-hand switch machine which should have been made by the shop forces. If established of record, this point might have placed the case in a different posture; however, the argument was not raised on the property and therefore it **cannot** be considered now. Consequently, in the facts which obtain here, we cannot conclude that the Carrier's **action was not in** conformity with the Agreement. We shall therefore deny the **claim**.

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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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this **11th** day of April 1974.