

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21182
Docket Number SG-21107

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railroad Signalmen**
(The Texas and Pacific Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the **Brotherhood of Railroad Signalmen** on the Texas and Pacific Railway company:

On behalf of Signal Foreman **R. W. Boyd** and **Signalmen D. O. Jones** and **P. R. Sumpter** for an additional payment of eight (8) hours each at time and one-half **their respective straight time** hourly rate, account required to **suspend** all work on **Texas and Pacific** property to perform **communications** pole line work off property, on **Missouri Pacific** property - work covered by another Craft; at **M. P. 159 near Waco, Texas**, on November **8, 1973**, in violation of the entire **Texas and Pacific Signalmen's Agreement**.

General Chairman file: 141. Carrier file: G 315-837

OPINION OF BOARD: On November 8, 1973 Claimants, members of Carrier's Signal Gang #1681, were required to go to the property of the **Missouri Pacific Railroad near Waco, Texas** for the purpose of **re-locating** three poles of a **communications line**. The work was accomplished in the course of their regularly **assigned work hours**. It is noted that Carrier is a **wholly owned subsidiary** of the **Missouri Pacific Railroad**.

Petitioner **asserts** that Carrier violated the **Agreement**, particularly **Rules 12 and 62**, when it **required** the Claimants to suspend **their** work on their seniority territory **during** regular working **hours in** order to perform work on another railroad. In addition, the Organization **maintains** that the parties have established, by past practice, that the rate for such work would be an additional **time** and one-half during **regular** working hours. The cited rules provide:

"Rule 12. **Employees will** not be required to suspend work during **regular** working hours to absorb overtime."

• * * *

"Rule 62. Except in extreme emergencies, **employees** covered by this agreement **will not** be required to perform work of **any** other craft nor **will employees** of **any** other craft be required to perform work coming within the scope of this agreement."

Carrier argues that there has been no violation of Rule 12 in that there is **no evidence** that overtime was absorbed. Further, with **respect to** Rule 62, Carrier asserts that the claim with regard to the work being off their assigned territories does **not demonstrate** that **Claimants** performed the work of **another** craft. In fact, **Carrier** argues that the work **in question** was no different **than** the work performed by Claimants on other days of their work week. Carrier **also** maintains that Prior payments **made** by the Superintendent of **Signals** were **erroneous** and do not **in any event** constitute a practice since that official had no authority to change or **interpret agreements**.

It is **evident** that the provisions of Rule 12 relating to the **Absorbing** of Overtime have no bearing on this dispute. **Furthermore**, Rule 62 does not by its clear terms prohibit the performance of scope work off of assigned territories. As the General Chairman admitted during the handling on the property, the **parties** have **no** rule covering work off-property. The **past practice argument falls**, bared on well **established principles**; we have held **consistently** that **payments** by operating **officers** without the knowledge or final approval of the officer authorized to make and interpret the Agreement are not binding (see Awards 18064 and 20337 among others). In any event it would have been necessary for Petitioner to establish the existence of a system-wide practice, which was not done.

We **must** conclude that Petitioner has not **demonstrated** a violation of any Agreement Rules in this dispute and there is no probative evidence of a controlling practice. Since it **is axiomatic** that this **Board** la without authority to write or expand **rules**, the Claim **must** be denied.

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 Number 21182
Docket Number **SG-21107**

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, **Illinois**, **this** 13th day of August **1976**.