

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21186
Docket Number SG-21209

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.

In behalf of J. S. white Signalmen, Headquarters Meridian, Miss., assigned working hours 7:30 AM to 4:30 PM Monday through Friday, one hour lunch period, for 144 hours straight time and 128 half time hours account of his working hours being changed to avoid paying him overtime, and because he was not allowed to work his regular assigned shift.

On February 19, 1974 carrier changed Mr. J. S. White's working hours from 7:30 AM to 4:30 PM (his regular assignment) to 5:30 PM to 1:30 AM which is a violation of the present Signalmen's Agreement with Southern Railway Co. Mr. White worked this shift which started at 5:30 PM for about four weeks while rail gang was laying rail in the vicinity of Meridian, Miss.

1. Claim is for 8 hours straight time for each of the following days that he was not permitted to work his regular assigned hours. February 20, 21, 22, 25, 26, 27, 28, and March 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 1974, or a total of 144 hours straight time. The 8 hours claimed on each of the above named dates are to be in addition to any pay he has already received or due him.

2. Claim is for half time for the following days that he was only paid 8 hours straight time while working from 5:30 PM to 1:30 AM. The days are as follows: February 20, 21, 22, 26, 27, 28, and March 1, 5, 6, 7, 9, 12, 13, 14, 16, 1974 or a total of 128 half time hours or 64 hours straight time. This time claimed is to be in addition to any pay he may have already received or due him because Mr. White was not paid time and one half for hours worked between 5:30 PM and 1:30 AM.

Carrier has violated the present Signalmen's Agreement particularly Rules 27a and Rule 34 when Mr. J. S. White was required to suspend work during his regular assigned hours and required to go to work at 5:30 PM in the evening and work an 8 hour shift at the straight time rate of pay.
[Carrier's file SG-38]

OPINION OF BOARD: Claimant was regularly arraigned to a Signalman's position with hours of 7:30 A.M. to 4:30 P.M., Monday through Friday. On February 19th, 1974, Claimant was assigned to work from 5:30 P.M. to 1:30 A.M. and continued on this schedule until March 15th; the change was occasioned by the work of a rail gang engaged in a night rail laying operation in the area. Claimant was paid time and one half for the first day on the night shift and the same rate for his first day he was back on the day shift, March 18th. He had been given forty-eight hours notice of the impending change.

Petitioner alleges that Claimant's hours were improperly changed and cites, inter alia, Rule 27 (a) which provides for the hours of each shift and specifically limits the start of a second shift to the finishing time of the first shift and not later than 4:00 P.M. Petitioner also relies on Rule 34 which provides;

"Employees will not be required to suspend work during regular hours to absorb overtime."

Carder stated that the changed hours were agreed to by a Local Chairman and the General Supervisor, but admitted, during the handling of the property, that the changes had been made improperly. Carrier asserted that this was a temporary change in hours and was properly filled without bulletining.

We have considered a similar dispute involving the same parties, in Award 16091, which also was concerned with a track laying operation, and that Award is controlling. In that decision we said that Claimant:

"...was removed from his regular assignment to fill a temporary new position. Thus, in violation of the Agreement he was suspended from his regular assignment and therefore is entitled to be paid at his overtime rate of pay. Since he was already paid at the pro rata rate he is entitled to be paid an additional amount the total of which 1.9 to equal the overtime rate."

There have been a host of other awards over the years which have consistently held that it was improper to require an employee to suspend work during his regular hours to absorb overtime. For all the foregoing reasons the Claim will be sustained and Claimant will be compensated consistently with our holding in Award 16091.

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 Employee involved in this dispute are respectively Carrier and **Employee** 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.

A W A R D

Put 1 **is** denied; **Part 2 is sustained.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Executive Secretary

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