

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21265
Do&et Number SG-21119

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: **Claims** of the General **Committee** of the Brotherhood of Railroad Signalmen on The **Texas** and Pacific Railway Company:

claim No. 1

On behalf of Signal Maintainer J. D. Shires for 13.9 hours at the time and one-half rate for work performed outside of his normal working hours clearing trouble on communication lines between Allen and Henryetta, Oklahoma, on the KO&G Subdivision: February 1, 1974, 4.5 hours; February 6, 1974, 3 hours; February 15, 1974, 3.7 hours; February 27, 1974, 2.7 hours.
[Carrier's file: G 315-92]

Claim No. 2

On behalf of Signal Maintainer J. D. Shires for five hours at the punitive rate from 8:30 p.m. Friday, June 21, 1974, to 1:30 a.m. Saturday, June 22, 1974, and 2.7 hours at the punitive rate from 6:30 p.m. to 9 p.m. on Wednesday, July 3, 1974, account clearing trouble on communication lines between Henryetta and Durant, Oklahoma. [Carrier file: G 225-661]

OPINION OF BOARD: The chronology of the two Agreements and their relevant provisions is significant in this dispute. On January 22, 1968, effective February 1, 1968, an Agreement was entered into by Petitioner, Carrier and the Kansas, Oklahoma & Gulf Railway Company principally as follows:

"It is agreed that the provisions of the Agreement, effective May 1, 1964, between the Missouri Pacific Railroad Company and the Brotherhood of Railroad Signalmen covering rules, rate of Pay and working conditions will be applicable to that portion of the Kansas, Oklahoma & Gulf Railway Company extending from the approach signal to the Interlocking Plant governing Frisco-KO&G crossing south of Muskogee, Oklahoma, to the connection of the KO&G --MKT at Durant, Oklahoma.

It is further agreed that Mr. J. D. Shires now employed as a signal maintainer on the Kansas, Oklahoma & Gulf Railway Company will be given a seniority date as a signalman and as an assistant as of January 1, 1968, on the Missouri

"Pacific signalmen's seniority roster, will have prior rights to regular bulletined positions in the territory as described herein, will work and be paid in accordance with the provisions of the Agreement between the Missouri Pacific Railroad Company and the Brotherhood of Railroad Signalmen, which will include such line and communications work in raid territory as may be required.

This Agreement, effective February 1, 1968, shall remain in effect until amended or cancelled pursuant to the provisions of the Railway Labor Act, as amended."

On August 22, 1968, effective September 1, 1968, due to the acquisition of certain additional communication pole liner, from Western Union, Carrier and Petitiona entered into an understanding which amended the basic Agreement between the parties in two respects: it expanded the Scope Rule to include "construction and maintenance of communications pole lines, wires and appurtenances "; It also provided:

"Monthly rated employees required to perform work on communications pole lines, wires and appurtenances outside their regularly assigned hours and on the sixth (6th) day of the work week and on holidays will be compensated therefore in accordance with rules applicable to hourly rated employees, in addition to their regular monthly rate."

The record indicates that Claimant was a monthly rated employee who had customarily worked on communication pole lines and had done 80 outside of his regularly assigned hours as indicated in the Claim. It is undisputed that Claimant's assignment prior to September 1, 1968 had included ".... such line and communications work in said territory as may be required." The record also contains information about certain contested payments to Claimant which Carrier alleges to have occurred through misapplication of the September 1, 1968 Agreement.

The principal position of Carrier is that the February 1, 1968 Agreement is a special agreement that was not amended or cancelled by the September 1, 1968 Agreement. Carrier asserts that this Board has no right to amend the February 1, 1968 Agreement by applying the later Agreement to KO&G territory. Further Carrier argues that the monthly rate covers all communications maintenance work performed by Claimant and he is not entitled to additional overtime compensation. Carrier also avers that the erroneous prior payment⁸ are not controlling (and we agree).

We cannot agree with Carrier's statement that the special agreement applicable to Claimant's position was not superseded by the general provisions amending the Missouri Pacific Signalmen's Agreement, even though

it had no direct application on the territory to which Claimant was assigned. An examination of the first Agreement, dated January 22, 1966 indicates unequivocally that Claimant "will work and be paid in accordance with" the basic Agreement. It is apparent that amendments to the basic Agreement relating to other matters, including rates of pay (from 1968 to 1974) were applied to Claimant, and it is impossible to discern any exceptions agreed to by the parties applicable to Claimant or his position. We can understand Carrier's position in that the August 22, 1968 Agreement was triggered by the Western Union work, which did not affect Claimant; however, the language of the rate change (*supra*) negotiated in that Agreement provides for no exceptions. This Board has no authority to write amendments or change any rules negotiated by the parties, and in this instance, Carrier would have us do so since there was an omission. We cannot, and hence the Claim must be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.