

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21414**
Docket Number SG-21198

James C. **McBrearty**, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(**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 Carrier's file: G-315-85. General Chairman file: 141-85

On behalf of Signal Foreman R. J. Thompson, Jr. (\$1186.04 per month), Signalmen J. D. Nichols, D. M. McCarthy, H. C. Adkinson and L. R. **Parrott** (\$5.52 per hour), and Assistant Signalmen M. L. McCarty (\$4.78 per hour) and J. E. Anderson (\$4.70 per hour), Gang 1643, for an additional payment of forty (40) hours at **time** and one-half and twenty three (23) hours at double their respective straight time hourly rates; account being held away from their headquarters at the end of their work week (4 PM, Friday, October 26 until 7 AM, Monday, October 29, 1973) in violation of paragraph 4 (b) of the Agreement of August 11, 1972.

Time Claimed

		<u>O.T. Hrs.</u>	<u>Double Time Hrs.</u>
Friday, Oct. 26:	4 PM to 12 Midnight	8	
Saturday, Oct. 27:	12 Midnight to 7 AM		7
	7 AM to 11 PM	16	
	11 PM to 12 Midnight		1
Sunday, Oct. 28:	12 Midnight to 7 AM		7
	7 AM to 11 PM	16	
	11 PM to 12 Midnight		1
Monday, Oct. 29:	12 Midnight to 7AM		7
		<hr/> 40	<hr/> 23

Claim No. 2. Carrier's file: G-315-86. General Chairman file: 141-86

On behalf of Signal Foreman R. J. Thompson, Jr. (\$1186.04 per month), Signalmen J. D. Nichols, B.M. McCarty, H. C. Adkinson and L. R. **Parrott** (\$5.52 per hour), and Assistant Signalmen M. L. McCarty (\$4.78 per hour) and J. E. Anderson (\$4.70 per hour), Gang 1643, for an additional payment of eighteen (18) hours at time and one-half and twenty three (23) hours at double their respective straight time hourly rates; account being held away from their headquarters at the end of their work week (4 PM, Friday, November 2 until **7AM**, Monday, November 5, 1973) in violation of paragraph 4 (b) of the Agreement of August 11, 1972.

It is understood these **men** were paid overtime for time actually worked - 2 hours on November 2 and 10 hours each day November 3 and 4, 1973.

	<u>Time Claimed</u>	<u>O.T. Hrs.</u>	<u>Double Time Hrs.</u>
Friday, Nw. 2:	6 PM to 12 Midnight	6	
Saturday, Nov. 3:	12 Midnight to 7 AM		7
	12 Noon to 1 PM	1	
	6 PM to 11 PM	5	
	11 PM to 12 Midnight		1
Sunday, Nw. 4:	12 Midnight to 7 AM		7
	12 Noon to 1 PM	1	
	6 PM to 11 PM	5	
	11 PM to 12 Midnight		1
Monday, Nov. 5:	12 Midnight to 7 AM		7
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Claim No. 3. Carrier's file: G 315-87. General Chairman file: 141-E

On behalf of Leading Signalmen J. E. McCarty (Gang 1645) and J. P. Burger (Gang 1681) for additional payments at time and one-half and double time their straight time hourly rate (\$1168.20 per month) as stated below; account being held away from their respective headquarters, McCarty - from 4 PM, Friday, **November** 2 until 7 AM, November 5, 1973, Burger - from **3:30** PM, Friday, **November** 2 until 4 PM, Sunday, November 4, 1973, in violation of **Rules** 48 (b-4) and (b-5) of the scheduled Agreement and paragraph 4 (b) of the Agreement of August 11, 1972.

McCarty's Time Claim

	<u>O.T. Hrs.</u>	<u>Double Time Hrs.</u>
Friday, Nw. 2 -	4 PM to 12 Midnight	8
Saturday, Nov. 3 -	12 Midnight to 7 AM	7
	7 AM to 11 PM	16
	11 PM to 12 Midnight	1
Sunday, Nw. 4 -	12 Midnight to 7 AM	7
	7 AM to 11 PM	16
	11 PM to 12 Midnight	1
Monday, Nw. 5 -	12 Midnight to 7 AM	7
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Burger's Time Claim

		<u>O.T. Hrs.</u>	<u>Double Time Hrs.</u>
Friday, Nw. 2	- 3:30 PM to 11:30 PM	8	
	11:30 PM to 12 Midnight		.5
Saturday, Nw. 3	- 12 Midnight to 7 AM		7.
	7 AM to 11 PM	16	
	11 PM to 12 Midnight		1.
Sunday, Nw. 4	- 12 Midnight to 7 AM		7.
	7 AM to 4 PM	9	
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		33	15.5

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Claim No. 4. Carrier file: G 315-89. General Chairman file: 141-89

Oh behalf of Signal Inspector A. J. **Fiorenza**, Alexandria, Louisiana, for an additional payment of forty (40) hours at time and one-half and twenty three (23) hours at double his straight time hourly **rate(\$1203.55** per month); account being held away from his headquarters from 4 PM, Friday, **November 2 until 7 AM**, Monday, November 5, 1973 to perform work of a construction gang **Signalman**, work not of his classification or assignment, in violation of Rules 48 (b-4) and (b-5) and the application of the Classification and Assignment rules of the Signalmen's Agreement as they have been understood **and** applied for all the years they have been in effect.

Time Claimed

		<u>O.T. Hrs.</u>	<u>Double Time Hrs.</u>
Friday, Nov. 2:	4 PM to 12 Midnight	8	
Saturday, Nw. 3:	12 Midnight to 7 AM		7
	7 AM to 11 PM	16	
	11 PM to 12 Midnight		1
Sunday, Nw. 4:	12 Midnight to 7 AM		7
	7 AM to 11 PM	16	
	11 PM to 12 Midnight		1
Monday, Nw. 5:	12 Midnight to 7 AM		7
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		40	23

OPINION OF BOARD: After a thorough review of the handling of these four (4) claims as presented on the property, as well as the arguments of the parties, the Board finds that Article 4 (b) of the Agreement does not prohibit the use of a signal gang for service away from their assigned headquarters on their rest days, nor provide for the **overtime** payment claimed on a continuous basis.

Moreover, Rule 48 (b) 4 and 5 does not prohibit the use of the monthly rated signalmen for service away from the headquarters point **on** their rest day, nor provide for the overtime payment claimed on a continuous basis.

In reference to **Rule 48 (b) 5**, Petitioner stated that the work performed by the monthly rated employees at the Morley Bridge on Saturday, November 3, 1973, was merely "accelerated construction work", which would fall within the meaning of the phrase "ordinary **maintenance** or construction work" that "shall not be required of monthly rated **employees** on the sixth day of the assigned work week, which ordinarily will be Saturday."

However, Webster's Third New International Dictionary (1971) defines "ordinary" as "occurring or encountered in the usual course of events; not uncommon or exceptional; not remarkable; routine or normal." Certainly, the Board cannot find that the signal repairs on Morley Bridge (necessitated by the diesel units and several freight cars of a train on September 16, 1973, running off the bridge, falling into a navigable water way, and killing the engine crew) was "ordinary", "routine or normal" maintenance or construction work.

Whether or not a "true emergency" **existed** on Saturday, November 3, 1973 is not relevant here, since **Rule 48 (b) 5** does not state that only in such circumstances can monthly rated employees be used **on the** sixth day of the assigned work week. It merely says monthly rated employees will not be required to perform "ordinary maintenance or construction work" **on** the sixth day of the assigned work week. Therefore, the claims 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;

Award Number 21414
Docket Number SG-21198

Page 5

That this Division of the Adjustment Board has jurisdiction
over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1977.