

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 22735
Docket **Umber** SG-22188

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railroad** Signalmen
(**Missouri** Pacific **Railroad** Company

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of Railroad **Signalmen** on the Missouri Pacific Railroad Company:

On behalf of Signal **Maintainer** S. L. **Wilkerson** for 3.6 hours at the **overtime** rate, which was deducted from his pay on the first period of April 1976 pay-roll (initially paid for work **performed** March 4, 1976)."

[Carrier file: 225-709]

OPINION OF BOARD: The **claimant** is a monthly-rated Signal **Maintainer** at Poplar Bluff, Missouri (about 200 miles **south** of St. Louis). The 3.6 hours claimed by him were incurred within the **period** from about 9 **PM** on **March** 4, 1976 to about 1 **AM** on **March** 5, 1976. **These** days were, respectively, Thursday and Friday and the claimant's fourth and **fifth** workdays.

On the evening of the Thursday, the Carrier experienced signal difficulties in its CTC system. The claimant was called out for diagnostic and correcting purposes. He rather quickly (**within** about a half-hour) **determined** that the Bell Telephone Company circuits were the source of the difficulties.

On being so notified, the Bell Telephone **Company** discovered that one of its cables had been struck by **lightning** (in the St. **Louis** area). Bell made the repairs. The claimant did not work **on its** equipment.

During the course of the repair process, however, the **claimant** remained **on duty**. He made some telephone calls checking on Bell's repair efforts, but he was essentially **standing-by**. His function was to await word from Bell that the repairs had been successfully completed and thereupon to check the Carrier equipment **in ascertainment** of a properly restored CTC system. He fulfilled this function and went home at the **already-given** time.

The claimant's mode of **remuneration** is governed by Rule 600. The **concluding** portion of paragraph (b) and paragraph (c) in its entirety read as **follows**:

"(b)

Employees paid on basis of a monthly rate will be assigned one regular rest day per week, Sunday if possible, which is understood to **extend** from midnight to midnight. Rules applicable to hourly rated **employees** will apply to **service** on such assigned rest day, and to ordinary maintenance or construction work on the sixth day of the work week. The straight-time hourly rate for such **employees** will be **determined** by **dividing** the monthly rate by 211. **Future** wage adjustments, so long as monthly rates remain in effect, shall be made **on** the basis of 211 hours per month.

"(c) Except as provided in paragraph (d) of this rule, the monthly rate **provided** for **herein** shall be for all work subject to the Scope of this Agreement **performed** on the position to which assigned **during** the first five (5) days of **the work week and** shall include other **than** ordinary maintenance and construction work on the sixth day of the work week. If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salaries of these positions **may** be taken up for **adjustment.**"*

It is **concededly true:** 1) that the monthly rate for **Signal Maintainers** (and others) is set at a level which contemplates the performance of **some** work, without extra compensation, which by normal workweek standards would be **overtime work --** it contemplates the working of **211 hours** per month; 2) that the claimant is not entitled to the pay he is claiming if, in the **period** for which the claim is made, he was engaged in "work subject to **the** Scope of this Agreement"; 3) that the claimant was not in the "excessive hours" situation dealt with in the last sentence of paragraph (c).

The Organization contends that the **claimant** was given a duty which did not represent "**work** subject to the Scope of this **Agreement.**" The grounds which it advances for the contention are: that, by long under **standing, Signal Maintainers** are not **to work on Bell equipment;** that, though there is no question that Management was within its rights to call the claimant out when the CTC system was discovered not to be functioning properly and though the claimant would **concededly** not have been entitled

* Paragraph (d) of the Rule concerns the performance of work outside an **employee's** assigned maintenance territory -- s-thing which is not here involved.

to extra compensation had he been confined to "work subject to the Scope of this Agreement," the fact is that the claimant in due course made a **firm** determination that Bell equipment was **the** source of the difficulties and that he thereafter did no repair work **on** Carrier equipment; **and** that, once he wade the determination, he was entitled to be released or to receive extra compensation for the time he was required to stay on.

We are **overruling** the contention. It **seems** to us that it would be plain surprising if it ware **true** that a **Signal Maintainer**, called out for the corrective purposes here presented, **would** not be expected **to** remain until the malfunctioning of the Carrier's transmission **lines** is in fact cured. It would be surprising, **in** other words, to find an **arrangement** by **which the Signal Maintainer would** go home as soon as he had wade the "Bell" **diagnosis, rather** than thereupon **remain** present to check on the **progress** of the repairs to the Bell equipment and to **make** sure that the completion of those repairs indeed **meant** that the Carrier's CTC **system was** restored to good **working** order. **The proper presumption,** we believe, is that the Signal Maintainer would do precisely as the **Claimant** **heredid**.

This amounts to saying that a conclusion to the contrary requires the strongest sort of supporting evidence. Such evidence is wholly lacking. The Organization has merely asserted that, by practice or **understanding**, a Signal Maintainer **is** released upon waking the "Bell" diagnosis in the kind of **circumstance here involved. What** evidence there is comes **from** the Carrier's side. And what it shows is that a prior case **of well-nigh** identical facts was brought by the Organization, resisted by the Carrier, and thereupon not appealed by the Organization.

We are holding that the **claimant** was engaged in "work subject to the Scope of this Agreement" and therefore not entitled to the wages he is asking for.

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 apprawd June 21, 1934;

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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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980.

