

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22900
Docket Number SG-22511

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company
((Former Texas & Pacific Railway Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (formerly the Texas and Pacific Railroad Company):

On behalf of the **members** of Signal Gang No. 1644, headquartered at Longview, Texas, for an additional payment each of one hour each day at their respective overtime rates, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 11, when beginning on December 20, 1976, it temporarily changed the starting time of this Signal Gang from 7:00 a.m. to 8:00 a.m., to conform with the starting time of a Maintenance of Way Rail gang, to avoid paying overtime.

The following is a list of members of that Signal Gang, their positions, straight time rates and dates that their starting time was changed:

<u>Employee</u>	<u>Position</u>	<u>S.T. Rate</u>	<u>Date</u>	<u>O.T. Rate</u>
A. A. Rogoski	Signalman	\$7.07	Dec. 20, 21, 22, 27, 28, 29, & 30, <u>1976</u>	7
"	"	7.20	Jan. 3, 4, 5, 6, 11, 12, 13, 17, 18, 19 & 20, <u>1977</u>	11
J. C. Rogoski	Signalman	7.07	Dec. 20, 21 & 22, 1976	3
"	"	7.20	Jan. 3, 4, 5, 6, 11, 12, 13, 17, 18, 19 & 20, <u>1977</u>	11
*M. D. Davis	Signalman	7.13	Dec. 27, 28, 29 & 30, <u>1976</u>	4
"	"	7.26	Jan. 3, 4, 5, 6, 11, 12, 13, 17, 18, 19 & 20, <u>1977</u>	11
C. M. Dawson	Assistant	5.95	Dec. 20, 21, 22, 27, 28, 29 & 30, 1976	7
"	"	6.08	Jan. 3, 4, 5, 6, 11, 12, 13, 17, 18, 19 & 20, 1977	11

<u>"Employee</u>	<u>Position</u>	<u>S.T. Rate</u>	<u>Date</u>	<u>O.T. Rate</u>
D. L. Estill	Assistant	\$5.95	Dec. 27, 28, 29 & 30, 1976	4
"	"	6.08	Jan. 3, 4, 5, 6, 11, 12, 13, 17, 18, 19 & 20, 1977	11
G. W. Young	Assistant	6.04	Jan. 17, 18, 19 & 20, 1977	4

(* 6¢ FCC license differential added to regular rate)"

/Carrier file: B 315-1387

OPINION OF BOARD: The hours of Signal Gang No. 1644 were changed by Carrier to start one hour later during the period they were working on a rail replacement program. Carrier asserts that the change was made to avoid conflict with the Hours of Service Act since the signalmen had to work behind the rail gang and both were working ten hour days.

The Organization filed claim, taking the position that the change was **made** to avoid payment of overtime and was in violation of Rule 11, which reads:

"The starting time of employes shall not be changed without first giving the employes affected 36 hours' notice. Starting time will not be temporarily changed for the purpose of avoiding overtime."

The Question for decision by the Board **is** whether the change was made for the purpose of avoiding overtime. It is apparent from the record that the signal gang had to work one hour each day after the rail gang completed their work. If the change in hours had not been made the signal gang would have necessarily been paid one hour of **overtime** each day. The change in hours avoided that payment. Carrier has attributed the change to a possible conflict with the Hours of Service law. However that conflict is only problematical and the avoidance of overtime is the reality. Faced with that background the Board finds that the change in hours was made for the purpose of avoiding overtime.

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 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:;


Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1980.