

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23058
Docket Number SC-23003

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: "Claim of the Brotherhood of Railroad Signalmen
on the Southern Pacific Transportation Company
(Texas & Louisiana Lines):

On behalf of monthly rated Signal Maintainer M. R. Robinson for eight hours' straight time pay that was deducted from his timeroll for July 29, 1978, in violation of the Memorandum of Agreement dated June 7, 1972."

OPINION OF BOARD: The essential facts in this case are undisputed. Claimant who is a monthly rated signal maintainer headquartered at Tower 26 in Houston, Texas, was called on July 29, 1978 between 10:30 AM and 11:00 AM to perform service but was not at home at the time of the call.

Carrier deducted eight (8) hours from his time roll at the straight time rates for failure to protect his assignment in accordance with Rule 601. It contends that he should have made himself available for this assignment in order to qualify for the entire monthly rate and that the June 7, 1972 Memorandum of Agreement, which Claimant cited was supportive of his point, was applicable since it only applied to overtime after the 213 hour monthly requirement was worked.

Claimant, contrawise, disputes this contention and asserts that the only agreement basis for a pay deduction is this memorandum. He contends that Carrier's argument that Article III of the December 4, 1970 Memorandum of Agreement clarifies and defines Rule 601 is new argument and thus procedurally defective since it was not considered or discussed on the property.

In our review of this case, we agree with Carrier that Rule 601 sets forth the methods and basis for determining monthly rates but we must reject its correlative and belated assertions that Article III of the December 4, 1970 Memorandum of Agreement is dispositive since it was for

the first time noted in Carrier's ex parte submission, contrary to the explicit requirements of Circular 1. Carrier was obligated to demonstrate on the property the interpretative relationship between Rule 601(c) and Article III of the aforementioned Memorandum rather than develop this line of reasoning at the Board level. Admittedly, paragraph 2 of page 2 of the June 7, 1972 Memorandum relates to service outside of regular assigned hours but Carrier was additionally required to show that notwithstanding, whether Claimant was called to work during his regular assignment as per Rule 601 he did not work 213 hours. Paragraph 3 of the June 7, 1972 Memorandum imposes a compensatory deduction where the employee is unavailable for service when called. But it cannot be exacted unless the employee has worked this time. By law, we can only consider those facts and arguments that were articulated consistent with our due process procedures. It has not been established that Claimant worked 213 hours and tier the aforementioned provision and the facts of record, we have no alternative option other than to sustain the claim.

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;

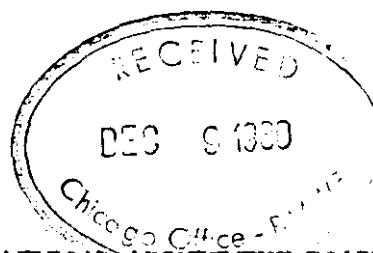
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

Claims sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.