

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31632
Docket No. SG-31460
96-3-93-3-500

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad (former Missouri Pacific Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of R. Zepeda for payment of 32 hours at the time and one-half rate, account Carrier violated the current Signalman's Agreement, particularly Rule 4(d), when it changed the Claimant's work hours to avoid the payment of overtime on various days from March 22 to March 31, 1992, without providing written notice of the change. Carrier's File No. 920361. General Chairman's File No. 92-43-T-A. BRS File Case No. 9173-UP(MP).”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant is a Signaller in Signal Gang 2614 with regularly assigned hours of 7:00 A.M. to 3:30 P.M., Monday through Friday. On occasion during the period March 22-31, 1992, the Claimant was detached from his regular task and assigned temporarily to working with a Maintenance of Way track gang.

This arrangement is covered by Appendix I, which reads in pertinent part as follows:

"2. When a signal gang is not used, one or more hourly rated signalmen assigned to a signal gang may be detached from a gang to work with MofW track maintenance gangs to adjust and/or repair signal equipment damaged by the MofW machinery. When so used, the starting time and the point of going on and off duty may be temporarily changed to conform to those of the MofW gang. All other provisions of the Signaller's Agreement will apply."

The parties agree that the Claimant was properly assigned to work temporarily with a Maintenance of Way gang, although by doing so he retained the right to hold on to his regularly assigned hours and days of work. The Organization contends, however, that in this circumstance, Rule 4 must be followed as to advance notice of change of "starting time". Since the Claimant was not given 72-hour notice, the Organization contends that he should be paid at the overtime rate for work outside his regular schedule. The Organization also argues that the Carrier changed the Claimant's hours "to avoid payment of overtime."

Rule 4(d) states:

"The starting time of employees shall not be changed without giving the employees affected seventy-two (72) hours' advance written notice, except as otherwise provided. Starting time shall not be temporarily changed for the purpose of avoiding overtime."

The claim also refers to Rule 7(d), which reads as follows:

"Employees changed from one shift to another by direction of the Management will be paid overtime rates for the first shift of each change. This will not apply in the exercise of seniority, when shifts are involved, nor when change of shifts is included in regular relief assignments."

The Carrier argues that the specific arrangement was sanctioned in Appendix I, namely, that a Signaller may be temporarily detached from a gang in order to work with a Maintenance of Way crew and on the Maintenance of Way crew's work schedule. This, the Carrier asserts, overrides the notice requirement of Rule 4(d), particularly since Rule 4(d) includes the limitation, "except as otherwise provided".

Similarly, Rule 7(d) does not override Appendix I, since there was no full change "from one shift to another", but rather a temporary adjustment of hours in accordance with Appendix I.

The Board sees no intent to "avoid overtime" since the stated purpose of the hours change was simply to conform with the Maintenance of Way crew's schedule.

The Board finds no Agreement violation in the failure to give 72 hours' notice in this specific instance. Indeed, as the Carrier points out, it is well understood that Maintenance of Way requirements for use of a Signaller on detached service generally does not permit the 72-hour advance notice, given the uncertainty of timing of Maintenance of Way operations.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 29th day of August 1996.