

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31723
Docket No. SG-31427
96-3-93-3-402**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago & Northwestern Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company (CNW):

Claim on behalf of J.W. McGrail for payment of seven hours and 30 minutes at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix A and Rules 10, 14 and 15, when it required the Claimant to suspend work during his regular assigned hours on April 14, 1992 to absorb overtime planned for April 15, 1992. Carrier's File No. 79-92-33. General Chairman's File No. S-AV-100. BRS File Case No. 9108-CNW."

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 were given due notice of hearing thereon.

The Claimant was a District Signal Foreman, responsible for the work of lower classified employees. As such, he was covered by Appendix "A" of the Schedule Rules Agreement. He was a monthly rated Foreman with regular scheduled hours of 7:00 A.M. to 3:30 P.M. On April 14, 1992, the Claimant was sent home at 2:00 P.M. in order to be rested and able to work 12 hours commencing 11:00 P.M. the same day to direct completion of an installation. The Board has no basis to question that the Claimant's regular hours were curtailed for the purpose stated above and not to avoid payment of overtime pay.

The Organization contends that Rule 10 (Absorbing Time) and Rules 14 and 15 are applicable here and would require payment at the overtime rate for time worked commencing 11:00 P.M. until commencement of the Claimant's regularly scheduled hours.

Contrary to the Organization's view, the Board finds that Appendix "A" does cover "rates of pay, hours of service . . ." to the exclusion of the Schedule Agreement provisions, unless otherwise indicated. Such exception refers only to the District Signal Foreman's rest day, which is not involved here. As a result, Rule 10 is not applicable; even if it were, there is no convincing demonstration that the schedule change was for the purpose of "absorbing time".

As to the Carrier's tentative settlement offer on a "non-referable" basis during the claim handling procedure, this was not accepted by the Organization; at the time, the Carrier stated that such non-acceptance would mean that the Claim was "denied in its entirety". Discussion of this was improperly included in the Organization's Submission.

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 25th day of September 1996.