

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35410
Docket No. SG35422
01-3-99-3-312

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company
(former Atchison, Topeka and Santa Fe Railway)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood **of Railroad** Signalmen on the Atchison, Topeka **&** Santa Fe Railway (ATSF):

Claim on behalf of J.L. Carroll, for 54 hours at his time and one-half rate plus skill differential pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 12(a) and 12(b), when it failed to utilize the Claimant for overtime work on his assigned territory from September 29 through November **24, 1997**. Carrier’s File No. SIB 98-03-05-AA. General Chairman’s File No. 974812. BRS File Case No. **10963-ATSF.**”

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 in this case was assigned to a Signal Maintainer position headquartered at Davis, Oklahoma. During the time period covered by the Statement of Claim, *supra*, the Carrier utilized an outside contractor to install **fiber** optic cable along their right-of-way. While this installation was taking place, the Carrier assigned two signal gang employees to accompany the contractor to insure that there was no damage done to the signal equipment.

Between the dates as outlined in this claim, the signal gang employees accrued 54 hours of overtime in conjunction with their oversight assignments. This overtime is the basis of the Organization's claim. They argue that Rule 12 - CALLS, specifically Rule 12(b), was somehow violated when the Claimant did not participate in the overtime work performed by the signal gang employees while they were assigned to follow the fiber optic installation process within the territory of the Claimant Signal Maintainer.

Rule 12 – CALLS reads, in pertinent part, as follows:

“RULE 12 CALLS

- (a) Employees assigned to, or filling vacancies on a territory shall notify the person designated by the Management where they may be called and shall respond promptly when called. When such employees desire to leave their home station or to be unavailable for call for a period of time in excess of three hours, they shall as much in advance as possible, notify the person designated by the Management that they will be away or unavailable. They will also advise about when they will again be available for service.
- (b) When necessary work is to be performed outside of assigned hours on an assigned territory, **employee(s)** will be called in the following order, if they are available and can be located promptly:
 - (1) The assigned maintainer.
 - (2) Any adjoining maintainer(s) on the same seniority district.

- (3a) Any hourly rated **employee(s)** on the same seniority district who has given the Signal Supervisor written notice, including his home address and phone number, of his desire to work overtime.
- (3b) If the trouble occurs on a territory which adjoins a territory in a different seniority district, the maintainer assigned to said adjoining territory may be called if he is closer to the trouble than any employee referred to in (3a) hereof.
- (4) The closest maintainer on the seniority district or, if Carrier desires, a Signal Inspector or Signal Foreman who is closer to the trouble than the maintainer referred to in the Step 4.
- (c) When employees assigned to a signal gang are required to work overtime, the immediately available and qualified senior man or men in the signal gang shall be given preference to such overtime work. Signal gang employees will not be considered 'immediately available' unless they are working at or in the immediate vicinity of the point of overtime work, or **if for** call service, they can be located promptly."

It is the Carrier's position that the overtime work here involved was not of a type covered by Rule 12(b). Rather, the Carrier argued that Rule 12(c) covered the situation here involved and that the Claimant had no demand right to perform such overtime service. The Carrier insists that the overtime work was directly connected to the work performed by the signal gang employees during their regular work hours and as such the overtime performed was a continuation of the regular work hours and was not covered by the provision of the "CALL" Rule cited.

After reviewing the case record of this case, the Board is convinced that there has been no violation of Rule 12. The overtime work in question properly accrued to the signal gang employees who were on site performing the same work during their regular tour of duty. On the basis of the fact situation which exists in this case and on the basis of the Rule language here involved, the Board cannot **find** that the Claimant has been

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deprived of any work opportunity which properly accrued to him. Therefore, the claim as presented is denied.

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 26th day of April, 2001.