

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that G. J. Giet be compensated under provisions of Rule 12 for all services performed outside of regular working hours on November 22 and 23, 1940.

EMPLOYES' STATEMENT OF FACTS: At about 8:00 P. M., Thursday, November 21, 1940, G. J. Giet, signalman, assigned to boarding cars located at Marion, Ohio, was directed to go to Mansfield, Ohio, Friday, November 22. Mr. Giet went to Mansfield on train number 8, leaving Marion at 4:14 A. M., and returned to Marion on train number 7, arriving at 8:00 P. M. the same day. He again left boarding cars Saturday, November 23 and went to Mansfield on train number 8 leaving Marion at 4:14 A. M.

Mr. Giet's regular assigned hours are from 6:00 A. M. to 3:00 P. M., daily, except Sundays and holidays with one hour for noonday meal.

This claim is for the difference between one-half rate (which has been paid) for six hours and forty-six minutes for time outside of assigned hours on November 22, 1940, and the rate of time and one-half for the same date and period; and for the difference between one-half rate for one hour and forty-six minutes which was paid for time outside of assigned hours on November 23, 1940 and the rate of time and one-half for the same date and period.

Mr. Giet is regularly assigned to boarding cars. This was not an emergency assignment.

POSITION OF EMPLOYES: Rule 12, reading as follows:

"The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows:

"Overtime hours either prior to or continuous with regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half.

"Employees will not be required to work more than ten (10) hours without being permitted to take a second meal period. Such second meal period will be paid for and shall not be in excess of thirty (30) minutes."

provides that overtime hours, either prior to or continuous with regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half.

Because of the failure of the foreman to properly notify Giet that he was to work at Mansfield November 22nd the Railroad in letter February 21, 1941, quoted above, endeavored to dispose of a portion of this claim by agreeing that this failure on the part of the foreman automatically placed Giet under Rule 15. This proposal was not accepted by the employees. We do not see where Rules 9, 10, 12, 13 or 14 are applicable. It is recognized that boarding cars are the home station and customarily employees in floating gangs from boarding cars are sent out to perform work and such employees are considered as being "assigned road work men," and through the years have customarily been paid under Rule 16 for the services which they perform.

We believe that this claim is without merit and it should be declined for the following reasons:

1. Employees in floating gangs have since the first Rules and Rates of Pay for Signal Department Employees, effective May 1, 1923, been considered and paid as being assigned to road work and this is the first instance of which we have record wherein this method of compensation is disputed.
2. Because of the circumstances on November 22nd the Railroad offered settlement, which was not accepted.
3. To support this claim would nullify Rule 16, which rules does not apply to maintainers or helpers assigned to regular sections but has customarily applied to employees assigned to floating gangs, which term indicates that assigned road work is involved.
4. Attention of the Third Division is directed to findings by them in their Award No. 483, interpreting the intent of Rule 16 and drawing comparison between its application and proper application of Rule 12.

OPINION OF BOARD: This is a claim by the Brotherhood that G. J. Giet, a signal helper covered by the Agreement with the Carrier, is entitled to receive the difference between what he has already received and pay at one and one-half times the regular rate for 6 hours and 46 minutes for services performed outside of his regular assignment on November 22, 1940, and 1 hour and 46 minutes on November 23, 1940.

The work to which Giet was regularly assigned was as signal helper with a gang which moved from place to place on the lines of the carrier as needed and directed in general in the construction and maintenance of interlocking plants, signaling devices and equipment. The home station was in camp cars which were moved as the needs of the service required.

Giet, at the time in question, had as his home station camp cars located at Marion, Ohio. He was a member of what the carrier calls a "signal floating gang." He and two others had been working at the interlocking plant at Sterling, Ohio. He was ordered to, on November 22, 1940, go from his home station to Mansfield, Ohio, to assist the maintainer at that point. He left at 4:14 A. M., worked a full day and returned at 8:00 P. M. The following day he left at 4:14 A. M., worked a full day but did not return, hence his claim is for the period between the time he was required to report and commencement of work and the period between completion of his day's work and his return to Marion on Nov. 22, 1940, and the period between the time he was required to report and commencement of work on November 23, 1940.

The Carrier contends that he was entitled to only one-half of the regular rate of pay.

The Claimant asserts that Rule 12 is the one applicable in the determination of this controversy. The portion of the rule which requires examination is as follows:

"Rule 12. The hourly rates named herein are for eight (8) hours. All service performed outside of the regularly established working period shall be paid for as follows:

"Overtime hours either prior to or continuous with regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half."

The Carrier on the other hand contends that Rule 16 (A), which reads as follows, is controlling:

"Rule 16. Employees regularly assigned to perform road work will be paid continuous time, exclusive of meal period, from time when required to report until they return as follows:

"(A) Time traveling and waiting, going to point of beginning work, and returning from point of ending work at one-half ($\frac{1}{2}$) regular rates, except that full regular rate will be paid for traveling on track motor cars."

Award 483 is cited as a precedent sustaining the position of the Claimant. A careful reading of the Opinion indicates that this precise question was not before the Division. The substance of the holding there was that the employe performed work during the period of overtime claimed, as distinguished from merely waiting and traveling, and thereby became entitled to pay for overtime in accordance with Rule 12.

The Claimant urges that within the meaning of Rule 16, Giet was not an employee **regularly assigned to perform road work**.

We are left to our own devices and reasoning to define these terms.

In an approach of course and of necessity, the words must be examined first in the light of their ordinarily accepted meaning and purport.

The layman would say that the terms include all of those who are regularly assigned to the performance of work which required movement from place to place regularly or as the needs of the service may require.

To the mind of the layman these terms are not ambiguous or uncertain, but, assuming that they are, then it is proper to interpret them on this carrier in the light of the significance mutually attributed to them by the parties, or to treat them in the light of ex parte interpretation by one party accepted by the other for a long period of time. The interpretation sought by the Carrier seems to have been long accepted.

Again if the terms are capable of more than one meaning, each of which is as consistent with reason and sound judgment as the other, it is proper to adopt the one adopted affirmatively or acquiescently by the parties. The Claimant appears to have acquiesced for a long period of time in the interpretation contended for here by the Carrier.

This all brings us to the conclusion, in the light of the record here, that any interpretation of the terms in question before us, other than that of acceptance in their ordinary sense, would not be warranted.

The claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1942.