

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the Brotherhood that the Carrier violated provisions of Rule 76 of the Agreement effective June 1, 1944, as amended by Memorandum of Agreement effective September 1, 1949, when it unilaterally changed the method of compensating Assistant Foreman Blue Sixkiller from a monthly rate to an hourly rate.

(b) Claim of the Brotherhood that Assistant Foreman Blue Sixkiller shall be paid the difference in what he should have been paid at the monthly rate and the amount he has been paid on the hourly basis as Assistant Foreman from September 1, 1949, until the monthly rate is restored.

JOINT STATEMENT OF FACTS: Current agreement of The Kansas City Southern Railway Company, Louisiana & Arkansas Railway Company, and the Brotherhood of Railroad Signalmen of America covering Signalmen and Linemen, became effective June 1, 1944.

Effective September 1, 1949, said agreement was amended to effectuate the 40-hour work week in accord with the National Agreement of March 19, 1949.

Copies of these agreements have been filed with the Board and are made a part hereof.

Rule 75 provides rates of pay for Signalmen and Linemen on both hourly and monthly basis.

Rules 16 to 42, inclusive, provide basis for and method of making payments for hourly rated employees. Rule 76 provides basis for and method of making payments for monthly rated employees:

Rule 76 provides—

“An employee assigned to the maintenance of a section who does not return to home station daily, and employees regularly assigned to perform road work may be paid on a monthly basis.

“Such employees shall, however, be assigned one regular rest day per week, Sunday if possible, and pay rules applicable to other employees shall apply to service performed on such assigned rest

OPINION OF BOARD: Claimant for long held an assignment for which under Rule 76 he "may be paid on a monthly basis," and formerly he was so paid. Effective September 1, 1949, several rules of the Agreement between Carrier and the Brotherhood were amended in order to effectuate the provisions of the forty-hour agreement. These amendments changed the previous working conditions, provisions and rates of Claimant's position.

On August 18, 1949, Claimant was advised that effective September 1, thereafter, which was the effective date of said rule amendments, he would be changed from a monthly to an hourly basis of pay. No objection or protest was made to the change until March 3, 1951, when the Brotherhood wrote making claim that he be placed back on the monthly rate and have an adjustment made in his salary to what he would have been paid on a monthly basis, but no defense is asserted of waiver, estoppel or laches based upon such long acceptance of the benefits of the change before seeking compensation for the losses, so that question need not be considered.

The parties are in accord that Carrier had the option to provide for payment either on an hourly or monthly basis, when the position was established. The Brotherhood contends that such option existed only when the position was established and that having once determined the basis of payment the Carrier might not thereafter change it without negotiation and agreement. On the contrary, Carrier contends that, under the provisions of the rule, it has the continuing option at any time upon reasonable notice to change the method of payment, together with the resulting working conditions.

We think it unnecessary to decide between these conflicting contentions. Effective on the very date of the change made by Carrier in Claimant's method of payment, there came into effect the forty-hour week agreement, which brought with it independent of any action of Carrier changes in the working hours and conditions and the rate of pay of Claimant's position largely to the advantage of Claimant and the disadvantage of Carrier. As of that date, the position was not the same as it had been when bulletined by Carrier and bid in by Claimant. Effective also as of that date, Rule 76 was amended and the amendment, apparently without other reason than to make it again applicable, republished the provision which it is agreed gave Carrier the option as to establishing an hourly or monthly rate.

Without attempting to decide whether under that rule Carrier may at any other time change the method of payment of Claimant's assignment, we think the readoption in the amendment of the provision for such option, in connection with the changes provided therein as to rates, hours and working conditions, shows the intent of the parties to give Carrier the right to exercise such option on the effective date of the amendment in the readjustment of its operations to conform to the provisions of the forty-hour week agreement. We think also that it was the intent, as shown by Rule 23 (k), that an assignment as changed by said amendments should not be considered a new job under bulletin rules.

In Award 1407 of the Second Division, we find no option provision there such as Rule 76 which guides us here.

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

That both parties to this dispute waived oral hearing thereon;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.