Award No. 6400

Docket No. SG-6254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Pacific Company (Pacific Lines) that Signalmen R. W. Barton and W. E. Alford be paid the difference between the straight-time rate which they were paid and the overtime rate which they should have been paid for 7 hours service rendered on February 22, 1949.

EMPLOYES' STATEMENT OF FACTS: Signalmen R. W. Barton and W. E. Alford were assigned to Signal Gang No. 4, Headquarters Brooklyn Yards, Portland, Oregon, with assigned hours from 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M. daily, except Sundays and Holidays, on bulletins No. 469 and No. 512, respectively.

On February 14, 1949 they were directed by the Management to proceed from Brooklyn to Cruzatte, Oregon, by truck, a distance of 80 miles, to repair storm damage, and on February 22, 1949, a holiday, they were directed by the Management to return to their headquarters at Brooklyn, departing from Cruzatte at 3:30 P. M. on Train No. 20, arriving at Portland, Oregon, at 10:30 P. M. the same day.

The claimants after detraining at Portland still had to carry the Company tools and equipment, which they had handled and been responsible for on the entire trip from Cruzatte, to their headquarters at Brooklyn Yard, which is four miles from Portland Station. No transportation for this part of the journey was furnished by the Company. The only transportation available was by bus. They were therefore left to their own resources to provide transportation for themselves, tools, and equipment back to their assigned headquarters.

This claim was handled in the usual manner on the property without securing a satisfactory settlement.

There is an agreement between the parties to this dispute bearing effective date of April 1, 1947, and request is respectfully made that it, by reference, be made a part of the record in this dispute.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the claimants were not properly compensated for services rendered on Febru-

claim the parties have since revised the working Agreement, then in force and effect, without abrogating or doing away with the practices of which they then and now complain."

Award 4208:

"Here, however, we find a practice existent for thirty-six years prior to any complaint by the Employes. If they did not know what was going on at Mina in 1910 certainly they must be presumed to have had knowledge of the situation by 1919 and since that time six agreements were negotiated with the Carrier. The record reveals no protest or attempt to have a telegrapher's position established at Mina at the time of negotiating said agreements. In Award No. 4050, this Board considering a similar situation on the Eastern Division of this same Carrier and involving the same Organization, the Board said:

> ". . . In view of the long existence of the present practices, the Petitioner's apparent acquiescence therein, coupled with the Agreement and the Wage scale attached thereto, we are of the clear opinion that the situation existing on the Carrier's property, illustrated by this claim, is one calling for negotiation and agreement, and that this Board does not posses the power to make a change in the existing agreement, such as sustaining the Claim would involve. We therefore hold that there has been no violation of the Agreement, and the claim is denied.'

We subscribe to the reasoning set forth in the quoted language and consider it controlling in this instance. Accordingly, we hold that there has been no violation of the Agreement and the claim is denied."

Expressions similar to the foregoing appear in the Opinion of Board in Awards Nos. 72, 213, 1435, 2436, 3603, 3727, 4050, 4428 and 5013.

IV. CONCLUSION

Carrier respectfully submits that the facts hereinbefore placed in evidence clearly demonstrate that this claim is not valid, and we ask that it be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made in behalf of Signalmen R. W. Barton and W. E. Alford for the difference in compensation between the straight time rate of pay and the overtime rate, for seven (7) hours for service rendered on February 22, 1949, when the two employes at direction of the Carrier, were required to return to their headquarters at Brooklyn, Oregon, from Cruzatte, Oregon. Claim is based on the seven (7) hours required to make the trip via train from 3:30 P. M. to 10:30 P. M., on February 22, 1949. There is no dispute between the parties, that on February 14, 1949, the Claimants were required by Carrier to make emergency repairs due to storm damage, and were required to go to Cruzatte, Oregon, to perform the necessary work. Claim is based upon the seven (7) hours, required to return to their headquarters, and the additional requirement by Carrier, for them to transport the tools used on the emergency duties. The Organization contends the employes during their return trip to their headquarters, and the additional requirement to transport and return their tools to their headquarters, was work

within the meaning of Rules 11 and 12 of the 1947 Agreement between the parties, and effective at the time these claims arose.

Carrier contends the claims as made are without merit, and relies on Rule 22, of the effective Agreement, which provides for actual time payment, for all time during regular working hours, while traveling or waiting for trains. That the employes were paid by Carrier for seven (7) hours, consumed in returning to their headquarters, for which they were paid their regular rate of pay, is not denied. But no provision is made in Rule 22, for overtime or additional pay, and the Organization bases the claim upon the proposition the employes were actually engaged in their work, when they were required to assume the responsibility of, and to transport the tools, during their return to headquarters.

We are of the opinion the employes ceased performing work for the Carrier when the emergency work to which they were assigned was completed or they were relieved by Carrier. That the requirement by Carrier for the employes to return to their headquarters was not **work** within the meaning of the Scope Rule, and Rules 11 and 12, but was **service** performed, as required by Carrier and such a situation of facts as we have here is clearly covered by the provisions of Rule 22 of the Agreement, and the employes were paid for the actual time consumed in traveling, by Carrier, at the regular rate of pay. The fact the employes were required to travel, does not constitute work, as provided by the Scope Rule, and we hold the traveling as required was a service, and not work generally recognized as signal work within the meaning of the Scope Rule.

Carrier has paid the employes at the proper rate, and has in no way violated the provisions of the Agreement, as contended by the Organization.

Based on the foregoing, the claims should be denied in their entirety.

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 Employes involved in this dispute are respecticely Carrier and Employes 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 claims as presented should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.