Award No. 10010
Docket No. SG-9544

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY—GULF DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad Company that:

(a) The Carrier violated Rules 13(a) and 23(b) of the Signalmen's Agreement when on several occasions it assigned to and required monthly-rated signal employes to perform ordinary maintenance on Saturday and holidays.

(b) Signal Forman A. T. Payne be compensated for eight and one-half hours at time and one-half his pro rata rate of pay in addition to compensation received account of the Carrier assigning and requiring him to perform ordinary maintenance on Wednesday, February 22, 1956, a regular holiday, in violation of Rules 13(a) and 23(b) of the Signalmen's Agreement. [Carrier's File No. 955-3]

BROTHERHOOD'S STATEMENT OF FACTS: On several occasions in the latter part of 1955 the Carrier required several of its monthly-rated signal maintenance employes to perform ordinary maintenance work on Saturday, which is a rest day of their regular assignment.

Under date of December 26, 1955, General Chairman W. W. Altus, wrote Assistant Signal Engineer M. M. Knight, advising that this practice was in violation of the agreement and requested that the practice be discontinued or the salaries of the positions be taken up for adjustment in accordance with the provisions of the Signalmen's Agreement, as follows:

> "It has been called to my attention that there is an apparent violation of the Rules of the Signalmen's working agreement, particularly Rule 23. Paragraph (b) of that Rule (which pertains to monthly rated employes) reads in part:
>
> > 'Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week.'
>
> "This is a direct quote from the 'Forty Hour Week Agreement' reached on a national basis in 1949.

OPINION OF BOARD: The Statement of Claim before us is divided into sections (a) and (b).

By reference to Claim (a), the Orgaization contends that under the provisions of Rules 13 (a) and 23 (b) of the effective Agreement here, Carrier on several occasions assigned to and required monthly-rated employes to perform ordinary maintenance work on Saturday and holidays. It will be noted in the record here that neither the Organization nor the employes have furnished information in the record, identifying the proper claimants, nor have specific dates been furnished on which alleged claims might be predicated. This Board has no authority to speculate on who the claimants might be, nor as to dates. Carrier may or may not have been guilty of alleged violations of the Agreement. In view of the provisions of Rule 26(i-1) of the Agreement, and for complete lack of proper evidence as required by the rule, Claim (a) must be dismissed. As further reason for dismissing this claim, we note the subject matter involved is in the nature of a complaint or protest regarding working conditions and rates of pay for which the Organization requests Carrier to discontinue the alleged practice or to adjust rates of pay. Such a request made on Carrier can only be reached by negotiation and conference between the parties. This Board has no jurisdiction to determine such dispute as here.

In reference to Claim (b) the Organization contends that Signal Foreman A. T. Payne should be paid for eight and one-half hours at the time and one-half rate when on Wednesday, February 22, 1956, the employe was required to perform ordinary maintenance service for which he should be compensated for Wednesday, February 22, 1956 at the time and one-half rate as provided by Rule 13 (a) relating to holiday pay and Rule 23 (b), Rates of Pay.

Carrier contends that under the provisions of Article II, Section 2 (b) of the National Agreement, August 21, 1954, all employes, such as claimant here, employed on a monthly rated basis, that such basis where the employe worked on a six day week schedule was calculated to include eight hours pay at the time and one-half rate and as provided by Section 2 (b) the monthly rate was adjusted by an addition of twenty-eight hours at the pro rata rate to allow for additional compensation for the seven holidays as provided in the National Holiday Agreement. Thus, it is shown here the claimant here was properly compensated for February 22, 1956, and the claim does not support a sustaining award. The Opinion and Findings in Awards 8190 and 7718 are applicable here.

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 Claim (a) should be dismissed. Claim (b), Carrier did not violate the Agreement.

AWARD

Claim (a) dismissed. Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1961.

Dissent to Award 10010, Docket SG-9544

The majority erred in dissmissing Claim (a) on the lack of evidence, names and dates. The correspondence exchanged between the parties during handling on the property, reproduced in the record, adequately disclosed that both parties were fully conversant with the issue. As a matter of fact, the issue and the merit of the Employes' position was so well known that Carrier offered a solution which the Employes did not find acceptable. The vague and indefinite issue was not raised until in the Carrier's ex parte submission to this Board, and by all reasonable standards and precedents of the Board, it was this new issue by Carrier that should have been dismissed rather than Claim (a).

The majority's assertion that a further reason for dismissing Claim (a) is that it "requests Carrier to discontinue the alleged practice or to adjust rates of pay" is completely without substance as is disclosed by a reading of Claim (a).

The majority committed further error in denying Claim (b) on the grounds that Claimant was properly compensated under Article II, Section 2(b) of the August 21, 1954 Agreement for service performed on February 22. The evidence before the Division was sufficient to prove beyond reasonable doubt that Article II, Section 2(b) of the August 21, 1954 Agreement was designed solely to provide for monthly rated employes treatment comparable to that given hourly rated employes in the matter of paid holidays and, therefore, has no bearing on the dispute covered by Claim (b). Awards 7718 and 8190 relied upon by the majority do not deal with the question of proper pay for work performed on a holiday by monthly rated employe and could not, therefore, have any application in the dispute covered by Award 10010.

Award 10010 does not give reasonable effect to the parties' Agreement; therefore, I dissent.

/s/ G. Orndorff
G. Orndorff
Labor Member