

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company:

In behalf of Mr. F. B. Piper, Jr., Foreman of Signal Gang No. 316, for a total of 22 hours at the overtime rate of pay account the Carrier used certain signalmen from Signal Gang No. 316 for overtime service on December 8, 9, and 14, 1958, and did not use Foreman F. B. Piper, Jr. [Carrier's File: 135-211-92, Case No. 83 Sig.]

EMPLOYEES' STATEMENT OF FACTS: Mr. F. B. Piper, Jr., is the regularly assigned Foreman of Signal Gang No. 316. Mr. Joseph Rademacher and Mr. Robert Barker are regularly assigned Signalmen employed in Signal Gang No. 316 under the supervision of Foreman Piper.

On December 8, 1958, Signalman Rademacher was used by the Carrier to work eight hours overtime at 67th Street Interlocking Plant, Chicago, Illinois. On December 9, 1958, Signalman Barker was used by the Carrier to work 8 hours overtime at 67th Street Interlocking Plant, and again on December 14, 1958, Signalman Barker was used to perform six hours overtime work at Ash Street Interlocking. In each instance, the overtime service worked by Signalmen Rademacher and Barker was continuous with the regular tour of duty of Signal Gang No. 316.

Inasmuch as Signalmen Rademacher and Barker, who were regularly assigned to Signal Gang No. 316 under the supervision of Foreman Piper, were used by the Carrier to perform overtime service and Foreman Piper was not used, the following claim in behalf of Foreman Piper was filed with Mr. J. H. Megee, Division Engineer, under date of January 12, 1959, by Local Chairman John J. D'Arcy, Jr.:

"I wish to present a grievance and a claim in behalf of Signal Foreman Fred B. Piper, Jr., Foreman of Gang No. 316. The grievance is that his Signalmen were performing overtime duties without their Signal Foreman. The men and the Gang Foreman are an integral unit and the classification rules state that the Foreman shall supervise the gang and this continues as long as the Gang works the Foreman shall supervise wherever they may be.

to an interlocking plant needed assistance. There was no need to send a Foreman, as the work involved was not construction or repair work, but routine Maintainer's work that the regularly assigned Maintainer could not handle alone because of inclement weather conditions. The services of Signal Foreman Piper were not needed nor required on the dates involved in this claim, and he is not entitled to the compensation he seeks.

Since the circumstances which gave rise to this dispute did not involve work assigned to or performed by Signal Foreman Piper's gang, there is absolutely no basis for this claim under Rule 212 (f).

In Third Division Award 6391, the Opinion of the Board states:

" . . . But any employe allegedly injured must be specifically identified, and it must be shown just how this employe's contractual rights have been invaded, for a given change may invade contractual rights of only some, all, or none of the employes covered by the applicable agreement."

Claimant Fred B. Piper, Jr., as the occupant of a position of Signal Foreman, had no right under the contract to overtime work which occurred on the territory of a Signal Maintainer. It was not work which he or members of his gang normally performed, and it did not arise out of work assigned to his gang. The claim before this Board is entirely lacking in merit and should be denied.

The Third Division has in a long line of awards consistently recognized and held that its authority is limited to the interpretation and application of agreement rules as written and has no authority to extend, modify, add to or take from or write rules for the parties to a dispute. Should the position of the parties be sustained, your Board would go beyond its function of interpreting existing provisions in the agreement between the parties as delegated by the Railway Labor Act and, in effect, write a new rule into the agreement. The Board is referred to First Division Award 7057 and 14566; Second Division Award 1474; Third Division Awards 389, 871, 1230, 1609, 2612, 2622, 3407, 4763, 5079, 6828, 7498, 8219, and 9198; and Award 501, Fourth Division, as evidence of such findings.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this dispute are not in issue. The claim was filed on behalf of a Foreman because signalmen under his supervision were used on three separate occasions to perform certain overtime service. The record shows that the emergency work involved was not construction and repair normally associated with Signal Gang activities, nor even a continuation of the work the gang had been performing. It was separate and distinct work, related to nonrecurrent emergencies.

Petitioner asserts that Claimant is entitled to overtime compensation because the Carrier violated various rules contained in the Agreement between the parties. Carrier contends that no rule in the Agreement supports the Claim.

The thrust of Petitioner's argument is found in Rule 212 (d) and (f), which are as follows:

"(d) Where a signal gang works in excess of eight hours per day, signal foremen will be allowed the overtime rate for the number of hours his gang is worked in excess of eight."

"(f) When overtime service is required of a part of a gang or group of employees, the senior employees of the gang or group of the class involved, who are available, shall have preference to it."

Rule 212 is primarily concerned with service outside of regular working hours. Section (d) thereof specifically is limited to overtime work by a signal gang, which in this case consisted of six members other than the Claimant. The record establishes that the individual employees here involved did not constitute a "gang" and we find that Section (d) of Rule 212 is inapplicable.

An essential element of this claim is whether supervision was needed under Rules 100 and 212 (d) by the Carrier to perform the work in question. We find no provision in the Agreement that contemplates such supervision and in the absence of such a requirement the Carrier retains the right to determine what supervision is necessary. Awards 11075, 12415.

Likewise, we find that Section (f) of Rule 212 has no application because the foreman was not "of the class involved."

Therefore, we must deny the claim.

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

That the parties waived oral hearing;

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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.