Award No. 13047
Docket No. SG-12322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Burlington and Quincy Railroad Company:

> On behalf of monthly-rated Signal Inspector W. W. Lauer for an adjustment in pay for services performed September 26 and 27, 1959, in connection with restoring signals to service following windstorm.
>
> [Carrier's File: S-57-60]

EMPLOYES' STATEMENT OF FACTS: The Claimant in this dispute, Mr. W. W. Lauer, had been assigned to a monthly-rated Signal Inspector position advertised by Bulletin No. 95 which was dated July 26, 1957, and included the following:

Title of position:	Signal Inspector
Location of headquarters:	Outfit car
Rate of pay:	$499.20 per month
Hours of service:	8 hours, per Rule 58 regular
Assigned territory:	System
Regular days off duty:	Saturday, Sunday, and Holidays
Permanent or temporary:	Permanent
Duties:	Testing of relays, semaphore and searchlight signals mechanisms, switch machines and insulation resistance test. Must be familiar with the designs and characteristics of apparatus and with knowledge of circuits of interlockings, remote control and automatic block signals.

On Saturday, September 26, 1959, the Carrier called Mr. Lauer to assist in repairing signal wires and apparatus that had been damaged by a severe

"STATEMENT OF CLAIM:

1. That under the current agreement System Installer J. B. Morris was improperly compensated for construction work performed at Detroit, Michigan, on Saturday, November 16, 1957.

2. That accordingly the carrier be ordered to additionally compensate System Installer J. B. Morris in the amount of seven (7) hours at the straight time rate of pay for Saturday, November 16, 1957.

OPINION OF BOARD: Mr. J. B. Morris, employed as a system installer for the carrier on a monthly basis, worked on his stand-by day installing an Electronic Messenger. The organization asserts in its claim that he should be additionally compensated in the amount of seven hours at the straight time rate of pay for Saturday, November 16, 1957, which was his stand-by day.

The carrier denied the claim on the basis that the Electronic Messenger was installed on Saturday and Sunday so that this change would not disrupt, any more than necessary, its operation of its facilities. Carrier further contends that this was not 'Ordinary Maintenance or Construction Work' as used in the Forty-Hour Week Agreement effective September 1, 1949.

We do not agree with the Organization that Award 1704 of this Division applies to the facts as presented.

The evidence in this case more clearly applies to the decision rendered by this Division in Award 1944, where it was agreed to the following:

> 'Employes admit that the work was necessary but assert there was no emergency and therefore it was "maintenance and construction work not theretofore required on Sunday". We think the requisite for Sunday work before the Forty Hour Week rule was not emergency but urgency; not whether it had been foreseen but whether it could well be prevented. The work here involved was not ordinary, but extraordinary, in that it was very seldom required and of necessity had to be performed on Saturday.'

We agree with the carrier that Saturday and Sunday would be the proper time to make such a change in its System of Communications. This is a vital part of their operation, and on these days there would be much less need for communications between points on their lines as the traffic movement would not only be less but the employes requiring such service would be far less. We do not feel that this installation could be classified as an ordinary installation. It was a completely new method of handling messages and the evidence presented shows that the work performed by the claimant was for the 'setting up and testing', not maintenance and construction.

This work was such that it would be seldom required and of necessity had to be performed when the installation would least affect the carrier's operation.

Claim denied."

Since Saturday, September 26 was the sixth day of claimant's work week, and since the parties agree that the work performed on that day was emergency work and not ordinary construction or maintenance work, the claim in this case for payment on Saturday should be denied for the same reasons given in the awards cited above.

With respect to payment claimed for Sunday, September 27, claimant's assigned rest day, the record is clear that claimant was compensated for all service performed on that day at the rate of time and one-half in addition to his monthly rate, as provided for by Rule 58 (g).

In handling the instant claim on the property, the Organization claimed that claimant performed work on both Saturday and Sunday that was not included in the duties assigned to his position. The organization, however, has never said what work claimant performed that was not a part of his assigned duties. The claimant, on the other hand, has stated, in writing, when filing his time slip claim in this case, that he worked overtime the number of hours claimed, describing the work as follows:

"Storm damage to signals — Monmouth — Protecting."

In other words, claimant was "protecting" his territory on Saturday and Sunday. Protecting his territory is a part of the assigned duties of all Signal Department employes, whether they be monthly rated or hourly rated. For protecting his territory on Saturday, claimant was paid his full monthly rate which compensated him for any and all work performed on Saturday; and for protecting his territory on Sunday claimant was paid for every minute worked at the rate of time and one-half in addition to his monthly rate, as prescribed by Rule 58.

As stated previously, claimant is a monthly rated signal inspector, which position is described in Rule 2 as:

> "An employe who is assigned to and whose principal duties are the inspection and testing of signal appliances, apparatus, circuits, and appurtenances, **but who may perform any Signal Department work.**" (Emphasis ours.)

Whatever work claimant might have done on Saturday and Sunday, the two dates specified in the claim, it certainly was Signal Department work, and as such it was definitely a part of his assigned duties.

The utter ridiculousness of the instant claim can be seen from the manner in which it was presented and handled by the General Chairman on the property, in his letter of October 30, 1959, wherein he contended as follows:

> "The correct and proper compensation for Mr. Lauer for this service is:
>
> Saturday, September 26, that portion of his 211 hours predicated under his monthly rate.
>
> Saturday, September 26, 8 hours 30 minutes at punitive rate. (3:30 P. M. to 12 midnight.)
>
> Sunday, September 27, 15 hours at double time rate, (12 midnight to 3:00 P. M.) having completed 16 hours continuous service prior to midnight."

With respect to the first two items quoted above, Rule 58 (a) provides that the monthly rate constitutes compensation for **all services rendered** on every day of the week except the rest day (Sunday). Thus, whatever service claimant performed on Saturday, September 26, (3:30 P. M. to Midnight) was compensated for in his monthly rate, and he is not entitled to any additional payment therefor. With respect to the third item, service performed on Sunday, it is unbelievable that anyone would be so naive as to contend that this employe completed 16 hours continuous service prior to midnight, when the General Chairman's own statement shows claimant started to work at 3:30 P. M. and worked only 8 hours 30 minutes prior to midnight.

It must be remembered that this claimant is a monthly rated employe whose monthly rate constitutes compensation for all services rendered except on his Sunday rest day, as provided by Rule 58, paragraphs (a) and (g). But, even if he were an hourly rated employe who worked the hours actually worked by claimant, as shown in the General Chairman's statement, namely from 3:30 P. M., Saturday, September 26 to 3:00 P. M., Sunday, September 27, he still would not qualify for any double time payment under the clear provisions of Rule 16, the overtime rule. Rule 16 provides in paragraph (b) that:

> "Time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period **computed from starting time of the employe's regular shift.**
>
> For the purpose of applying the double time provisions of this rule the regular starting time during the week will be considered as the starting time on holidays or rest days. The following examples reflect the proper application of the double time provisions of this rule, assuming the employe's work week is Monday through Friday:" (Emphasis ours.)

The employe's regular starting time in this case is 7:00 A. M. Using this starting time on his rest day (Sunday), the **only day on which he is covered by the overtime rule,** it will be seen that he did not work 16 continuous hours computed from his starting time.

The Petitioner is under the mistaken impression that an employe automatically receives double time after 16 hours of continuous work. However, reference to Examples 1 and 6 shown in Rule 16 will show the fallacy of employes' contentions. Example No. 1 reads as follows:

> "Regular assignment 8:00 A. M. to 5:00 P. M. Gang or individual reports for work at 2:00 A. M., Sunday (Rest Day) and continues through until 5:00 P. M., Monday (Assigned work day). Should be as follows:
>
> Sunday —
>
> 2 A. M. to 8 A. M. ..... 6 hrs. at time and one-half
>
> (Rest Day) —
>
> 8 A. M. to 4 P. M. ..... 8 hrs. at time and one-half
>
> 4 P. M. to 12 MN ..... 8 hrs. at time and one-half

Monday —

12 MN to 8 A. M. ..... 8 hrs. at double time

(Work Day) —

8 A. M. to 12 N,

1 P. M. to 5 P. M. ..... 8 hrs. at straight time"

Example No. 6 reads as follows:

"Gang or individual is called and reports at 11 P. M., Monday night and works through until 5 P. M., Wednesday. Pay as follows:

Monday —

11 P. M. to 8 A. M. ..... 9 hrs. at time and one-half

Tuesday —

8 A. M. to 12 N,

1 P. M. to 5 P. M. ..... 8 hrs. at straight time

5 P. M. to 1 A. M. ..... 8 hrs. at time and one-half

Wednesday —

1 A. M. to 8 A. M. ..... 7 hrs. at double time

8 A. M. to 12 N,

1 P. M. to 5 P. M. ..... 8 hrs. at straight time"

It is significant to note that in Example No. 1 the employe worked a total of 22 continuous hours before double time accrued, because double time does not accrue until after 16 hours of continuous service computed from starting time of the employe's regular shift. In Example No. 6, it will be noted that the employes worked a total of 25 hours continuously before double time accrued, again because double time does not accrue until after 16 hours of continuous service computed from the starting time of employe's regular shift.

The double time rule, particularly that part of it that specifies that double time will begin to accrue after 16 hours of continuous service **computed from the regular starting time,** was explained in clear detail in Third Division Award 5262. In that case, the employes worked continuously from 10 P. M. on a Saturday until 7:30 A. M on a Monday, and the Board ruled they were entitled to double time only for that period from midnight Sunday until 7:30 A. M., Monday, or for only 7 hours 30 minutes. In other words, the double time did not begin to accrue until 16 hours after their regular starting time on Sunday even though they started to work at 10 P. M. on Saturday. The employes involved in Award 5262 actually worked a total of 26 continuous hours from 10 P. M. Saturday until midnight Sunday before the double time provisions of the rule became effective.

In the instant case, claimant did not perform 16 hours of continuous service computed from the starting time of his regular shift — the General Chairman admits the fact that claimant went to work at 3:30 P. M. on Saturday, September 26 and that he worked only to 3:00 P. M. on Sunday, September 27 — consequently, even if he were an hourly rated employe instead of a monthly employe, he would not be entitled to double time for any time worked on Sunday.

It is significant to note, also at this point, that the claim as handled on the property was for an alleged violation of some undisclosed rule or provision of the agreement, whereas, the claim as presented to the Board is for "an adjustment in pay". Rule 58 (d) provides that:

> "If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salary for these positions may be taken up for adjustment."

The positions referred to in the paragraph quoted above are, of course, monthly rated positions like the one herein under discussion. If the petitioner's claim as presented to the Board is for an adjustment in the salary of this monthly rated signal inspector, as contemplated in Rule 58 (d), then it is obvious that petitioner is before the wrong tribunal. The monthly rate applicable to claimant's position is an agreed-upon rate as shown in Rule 57 — it can be changed only by negotiation between the parties who adopted Rules 57 and 58. As stated in Third Division Award 6291:

> "This Board is not authorized or permitted to revise or amend the governing rules of the Agreement. . . . This must be done only by negotiation between the parties. This has been held in numerous Awards by this Board, and we cite Nos. 5703, 2491 and 4439 as expressing the holding of the Board."

If Petitioner feels that Rule 58 does not produce adequate compensation for claimant's position by reason of claimant being required to work excessive hours, the proper procedure under the Railway Labor Act is to negotiate a new rate, rather than process a claim before the Third Division, National Railroad Adjutsment Board, which Board has no jurisdiction in such matters.

In summary, Carrier respectfully asserts that:

> 1. Claimant's monthly rate constitutes compensation for all services performed on six days per week. As such, he is not entitled to any additional compensation for work performed on Saturday, September 26.
>
> 2. Claimant was properly compensated for all work performed on Sunday, September 27, at the rate of time and one-half, since he did not work in excess of 16 continuous hours computed from his regular starting time.
>
> 3. The claim presented to the Board is not the same claim that was handled on the property, but is a request for an adjustment in rate, which request is not within the jurisdiction of the Adjustment Board.

In the light of the above, the claim is without merit, contractually or otherwise, and must be denied in its entirety.

OPINION OF BOARD: Claimant is a monthly-rated Signal Inspector whose regular days off duty are Saturday, Sunday and Holidays. On Saturday, September 26, 1959, he was called to assist in repairing signal equipment damaged in a severe wind storm. He worked from 3:30 P. M. Saturday until 3:00 P. M. Sunday performing signal repair work which is not included in the duties of Signal Inspector. He submitted a claim for 7½ hours at time and one-half and 7½ hours at double time. Carrier paid him for 15 hours at time and one-half.

In all, Claimant worked 23½ hours, the first 8½ hours on Saturday and the remaining 15 on Sunday. The dispute is over whether Saturday's hours should be counted as part of the 16 hours after which he would be entitled to double time according to Rule 16, which reads in part as follows:

"RULE 16. OVERTIME

(a) 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:

(b) Time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from starting time of the employe's regular shift.

For the purpose of applying the double time provisions of this rule the regular starting time during the week will be considered as the starting time on holidays or rest days. . . ."

Since Claimant is a monthly-rated employe Rule 16 would not normally apply. Rule 58 covers the compensation of a monthly rated employe. It reads in part as follows:

"RULE 58. MONTHLY RATED EMPLOYES

(a) Foremen and Signal Inspectors will be paid the monthly rate specified in Rule 57 and an employe assigned to the maintenance of a territory who does not return to his home station daily may be paid the applicable monthly rate referred to in Rule 57 which shall constitute compensation for all services rendered except as hereinafter provided in this rule.

* * * * *

(f) In computing future wage adjustments for monthly rated employes covered by this agreement, 208⅔ hours shall be used as the multiplier.

(g) Monthly rated employes shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employes who are subject to the terms of this agreement will apply to service which is performed by monthly rated employes on such assigned rest day.

(h) Ordinary maintenance or construction work shall not be required of monthly rated employes on the 6th day of the assigned work week which ordinarily will be Saturday."

The parties are agreed that Saturday, September 26, 1959, was Claimant's sixth day of work and that he actually performed 8½ hours of emergency service that date. He was not entitled to any extra compensation for Saturday's work because it was not ordinary maintenance or construction work as provided in Rule 58 (h) and was, therefore, fully comprehended in the monthly stipend as provided in Paragraph (a) of Rule 58.

What is in dispute is the interpretation and effect of Paragraph (g) of Rule 58, which applies rules affecting hourly rated employes to monthly-rated employes.

The employes contend that Claimant was entitled to 7½ hours at double time because having worked 23½ hours in all, the last 7½ hours were hours in excess of 16.

The employe's interpretation would be correct if the only criterion for double pay were that an employe worked 16 hours immediately preceding. Rule 16, however, provides that it be in a twenty-four hour period computed from the starting time of the employe's regular shift. The Claimant's regular shift began at 7:00 A. M. To qualify, he must have worked 16 hours between 7:00 A. M. Saturday and 7:00 A. M. Sunday. At 7:00 A. M. Sunday he had worked only 15½ hours and, therefore, did not qualify. It should be noted that Rule 16 expressly states that "for the purpose of applying the double time provisions the regular starting time during the week will be considered as the starting time on holidays or rest days," at which time a new cycle of 24 hours begins again. This is borne out by the examples set forth in Rule 16 (b). Example 1 is similar to our problem: Regular assignment 8:00 A. M. to 5:00 P. M. An individual reports for work at 2:00 A. M. Sunday (Rest Day) and continues through until 5:00 P. M. Monday (assigned work day). Double time does not begin at 6:00 P. M., 16 hours after 2:00 A. M., but at 12:00 P. M., 16 hours after regular starting time of 8:00 A. M.

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 Employes involved in this dispute are respectively 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1964.