

Award No. 13286

Docket No. SG-12841

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company:

In behalf of Signal Maintainers C. D. Bradshaw, W. V. Endecott and C. J. Satterfield, whose respective assigned headquarters are located at Cherokee Yards, Tulsa, Oklahoma; and Sapulpa, Oklahoma, for the difference in the amount of compensation paid each respectively by the Carrier and the amount of compensation claimed by each respectively under Rule 17 when called and used by the Carrier to perform service at Depew, Oklahoma, on May 7 and 9, 1960.

EMPLOYEES' STATEMENT OF FACTS: On May 6, 1960, a tornado did damage to Carrier's signal system at Depew, Oklahoma. Late that evening, the Carrier's Supervisor of Signals, Mr. G. F. Groff, notified the Claimants in this dispute that they were to report at 7 A. M. on May 7, 1960 at their home stations, where they would be picked up and taken to Depew to repair these damages. All three Claimants are Signal Maintainers under the supervision of Mr. Groff in the Tulsa, Oklahoma area. May 7, 1960 was an assigned rest day for each of the Claimants who are all hourly rated employees.

On May 7, 1960, the Claimants were picked up by the Signal Supervisor. After loading tools and supplies into the company-owned vehicle used to transport them, the Maintainers were driven to Depew, a distance of approximately 30 miles. They performed work at Depew and were later driven back to their home station and released.

In addition to the above, one Claimant performed overtime work on May 9, 1960 at the storm scene. This work was following and continuous with his regularly assigned working hours.

The employees involved in this dispute are: C. J. Satterfield, Signal Maintainer with headquarters at Sapulpa, Oklahoma; C. D. Bradshaw, Signal Maintainer with headquarters at Cherokee Yards, Tulsa; and W. V. Endecott, Signal Maintainer with headquarters at Tulsa.

a passenger in a Company truck on Friday, May 6, 1960 traveling from Oklahoma City, Oklahoma to Sapulpa, Oklahoma to repair storm damage and he claimed and was paid at the straight time rate of pay for travel time.

Carrier's Exhibits A-13, A-14 and A-15 reveal similar information and the Board will note that these signal employees traveled to and from the storm area involved in the instant dispute and that such employees claimed and were paid the straight time rate of pay for riding time.

Attached hereto as Carrier's Exhibit A-16 is a statement of Signal Foreman, M. K. Rhinehart and the last paragraph in such statement reads as follows:

"Instructions are in effect that all travel time will be paid at straight time rate and I have always complied with these instructions. In other words, the men on this gang were not paid any overtime for travel."

While handling the instant dispute on the property the Organization submitted thirty-nine statements secured from individual employees in support of the Organization's position. Twenty-six of such statements were on mimeographed form and such form is outlined in Carrier's Exhibit B-1, attached hereto.

In conclusion, the Carrier has shown first, that the Agreement Rules applied to facts in this case fail to support the Organization's position. The Organization relies on General Rule 17 while the Carrier relies on Rule 21 which specifically provides for the payment of straight time for riding. Secondly, the Carrier has shown that the straight time rate of pay has always been paid employees for riding time while passengers in a Company truck or automobile. Thirdly, the time reports of the employees attached as Carrier's Exhibits conclusively show that riding time has always been paid for at the straight time rate of pay.

The instant claims have neither merit nor Agreement support and the Board is requested to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether the time spent by Claimants traveling on a truck back and forth between their home station and a scene of damage at which they performed work should have been paid at straight time or at time and one-half. Brotherhood cites Rules 16(a) and 17, and claims that under Rule 17 time and one-half should have been paid. Carrier claims that Rule 21 applies and therefore the straight time payment was proper.

We find that Rules 16 and 17 are general rules and that Rule 21 is a special rule. Rule 21, among other things, deals specifically with the rate of pay for time spent traveling. Rule 21, being specific on the subject in question, should take precedence over Rules 16 and 17. To the extent that it is applicable, Rule 21 more narrowly defines employees' entitlements granted in Rules 16 and 17.

Brotherhood argues in its Submission that Rule 21 is a general rule because it uses the word "daily" in its first phrase; that it does not apply to the Claimants, but is limited in its application "to employees on general assign-

ment, such as those assigned to terminals and who, as a routine matter, leave their home station daily to perform work from which they might be unable to return to home station before their regular quitting time." Brotherhood fails to prove by any evidence that this meaning should be inferred from the word "daily" as used in Rule 21. Moreover, the record does not show that during the more than twelve months of negotiation of this grievance on the property Brotherhood ever raised this point as a reason for the nonapplicability to the Claimants of Rule 21, even though the issue of the applicability of Rule 21 to the Claimants was placed clearly before Brotherhood by the Carrier within a week after the performance of the duties which gave rise to the dispute.

It is true that the record does not make clear the implications of the word "daily" in the first phrase of Rule 21. Had Brotherhood presented evidence that the rule did not apply to the Claimants because they occupied positions intended by the use of the word "daily" to be excluded from application of the rule, Carrier would have had the opportunity to counter with evidence that the use of the word was not intended to exclude Claimants' positions, or evidence that Claimants' duties were such that their positions fell within the meaning ascribed to the phrase by Brotherhood in its Submission, or evidence which might in some other way have clarified the meaning of the word as used in the rule.

Where, as here, from a normal reading a rule appears to be special and specific, strong evidence of a consistent history, custom or practice might convince us of so special a use of language that we would find that the rule is not what it appears to be, but is general. No such evidence is in this record. Rule 21 is a special rule. To the extent that Rules 17 and 21 are in conflict, Rule 21 takes precedence.

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 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 10th day of February, 1965.

DISSENT TO AWARD NO. 13286

DOCKET NO. SG-12841

Award No. 13286 is clearly in error; the Majority completely disregards the specific provisions of the agreement that:

"Rule 17. (b) Employees released from duty and notified * * * to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes at the time and one-half rate. If held longer than two hours and forty minutes they will be paid at the rate of time and one-half time computed on the actual minute basis. * * * The time of employees so notified will begin when required to report and end when released at home station."

and, calling a general rule (21) specific, provides a loop hole for the Carrier to escape the requirements of the agreement which the employees thought was made in good faith.

Award No. 13286 is an obvious error; therefore, I dissent.

W. W. Altus
For Labor Members