

Award No. 14090
Docket No. SG-14270

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 12(b), when it deducted one hour at the pro rata rate from the pay of Mr. E. J. Strickland, Maintainer at Fort Lauderdale, Florida, which he had shown on Form 1168 for Sunday, August 19, 1962, for preparation time account being called to go to work on the adjoining Maintainer's territory.

(b) The Carrier be required to properly compensate the above-named Claimant for one (1) hour at the pro rata rate, or \$2.65.

EMPLOYEES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute arose as a result of the Carrier's action of refusing to pay Claimant E. J. Strickland, Maintainer at Fort Lauderdale, preparation time in the amount of one (1) hour at the pro rata rate as provided in Rule 12(b) of the current Signalmen's Agreement, as amended, for Sunday, August 19, 1962, when he was called to work on the adjoining Maintainer's territory.

Mr. Strickland showed this time on Form 1168, which was submitted to Supervisor Communications and Signals R. L. Stephens for payment; however, payment was not received on his paycheck for the last half of August, so Claimant Strickland addressed the following to the Supervisor on September 17, 1962:

"The last half of August my pay check was short 1 hour straight time. Would you please check this and advise."

On September 20, Supervisor Stephens addressed a letter to Mr. Strickland in which he said:

"I advised you by phone that the one hour preparation time which you showed for August 19th could not be allowed. I therefore cancelled this time on your form 1168. Our investigation shows that

Maintainer was entitled to an hour's "preparation time" simply because he was called to travel to an adjoining section, a call which in this case involved only a total of one hour and fifty minutes from the time the call was received until Mr. Strickland returned to his home.

For the reasons stated the claim is without merit and should be denied.

OPINION OF BOARD: Claimant's regular rest days were Saturday and Sunday. On Sunday, August 19, 1962, he was called at 5:40 P. M. and directed to work at a location six miles from his headquarters. He returned at 7:30 P. M. and, although he worked on call for only one hour and fifty minutes, he was paid for two hours and forty minutes at the time and one-half rate as provided in Rule 8(a) of the Agreement. The claim is for an additional hour at the pro rata rate which is for preparation time provided for in Rule 12. That rule provides for travel time pay. Paragraph (a) thereof deals with such pay for employees who leave and return to their home station and paragraph (b) deals with such pay for employees who do not return to their home station the same day. The last two sentences of said Rule 12(b) read:

"When employees are notified or called to leave their home station under this or the preceding rule, before or after their regular work period, they will be allowed one hour at pro-rata rate as preparation time, except this shall not apply to Maintainers called to work on their assigned territory. Necessary actual expenses will be allowed while away from home station under this rule."

Carrier argues (1) that the one hour travel time in Rule 12(b) was intended to provide time for preparation such as "packing a bag and getting ready to travel by train" and that it necessarily applies only to employees who do not return to the home station the same day; (2) that Claimant was not called before or after "his regular work period since the subject call was on a Sunday, a day which Mr. Strickland's job was not assigned to work"; and (3) that no similar claims had been filed since the Agreement became effective on April 1, 1948.

It is desirable to discuss Carrier's contention in the reverse order. The mere fact that no similar claims were filed since 1948 is of no consequence unless the applicable rule is ambiguous, subject to several meanings and intent has been given to it by an established past practice. Rule 12 is not ambiguous; it is clear and meaningful. No past practice may change a clear and meaningful language. It specifically says that the one hour preparation time will be allowed to employees who are "called to leave their home station under this or the preceding rule." Rule 12 consists of paragraphs (a), (b), (c) and (d). Paragraph (a) is applicable to this case. The language does not restrict preparation time to paragraph (b). If the parties had so intended they should have provided that it shall apply only to conditions set out in said paragraph (b).

Sunday was Claimant's rest day. Any work performed by him on that day was after his "regular work period." His regular work periods were the assigned hours Monday through Friday.

Preparation may or may not involve packing a bag. An employee may be called on his rest day while he is away from home, or he may need to change from street to work clothes. The one hour preparation allowance is a reasonable compromise. It may take some longer, some less and others none. It is not uncommon to provide for such a payment in a collective bar-

gaining agreement as a compromise after considerable discussion. We have previously held that it applies to employes who return to their home stations the same day as well as to those who do not.

Whatever the equities may be, we are obliged to apply the clear and meaningful language of the Agreement.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.