Award No. 14242
Docket No. SG-14735

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific Railroad Company - Ft. Worth and Denver Railway Company (Burlington-Rock Island Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company, that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 3, 11, 22, 23 and 39, when, on February 4, 1963, it required a monthly-rated Signal Maintainer, Mr. J. J. Zalesak (whose regular assigned hours are from 8:00 A. M. to 12:00 Noon, and from 1:00 P. M. to 5:00 P. M.) to perform work on another signal maintenance territory from 5:00 A. M. to 2:30 P. M., and then did not allow him any additional compensation.

(b) The Carrier be required to compensate Mr. Zalesak for nine (9) hours and thirty (30) minutes at punitive rate of pay for this violation; this to be paid him in addition to what he may have already been paid for this date. [Carrier's File: Jt SG-3.]

EMPLOYES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute is a result of the Carrier's action in requiring a monthly-rated Signal Maintainer to perform signal work on another signal maintenance territory. A basic question for this Board to decide is whether or not a monthly-rated Signal Maintainer is entitled to additional compensation (beyond the established monthly rate) for work Carrier requires him to perform beyond the limits of the territory to which he had been assigned.

Carrier contends that a monthly rate is paid to a Signal Maintainer to compensate him for all services rendered Mondays through Saturdays anywhere on the entire railroad — whereas we hold that the monthly rate is paid to a Signal Maintainer for performing routine maintenance work Mondays through

These signals are located in the territory between Mile Post 97.3 and Mile Post 141.7 on territory of signal maintainer headquartered at Richards, Texas, and adjacent to territory of claimant that extends from Mile Post 60.6 to Mile Post 97.3. The signal maintainer headquartered at Richards was absent from duty on the claim date without permission or prior knowledge of Carrier.

The agreement between the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company — Fort Worth and Denver Railway Company and the Brotherhood of Railroad Signalmen, effective January 1, 1955, is on file with the Board and by this reference is made part of this submission.

OPINION OF BOARD: The Claimant was a monthly rated Signal Maintainer with regular assigned working hours from 8:00 A. M. to 12:00 Noon, and from 1:00 P. M. to 5:00 P. M. He performs regular signal maintenance work six days per week — Monday through Saturday. On Monday, February 4, 1963, a regular assigned work day, he was required to perform signal work off his assigned territory from 5:00 A. M. until 2:30 P. M. and by reason thereof submitted a claim for nine and one-half (9½) hours' overtime and requested pay at the punitive rate.

Carrier denied the claim on the ground that Claimant worked on a regular assigned work day and being a monthly rated employe he is paid a monthly rate, under the Agreement, which covers any and all regular and emergency service Monday through Saturday.

The material facts in this case are not in dispute.

The Brotherhood claims Carrier violated Rules 3, 11, 22, 23 and 39 of the Agreement.

An examination of the record discloses that the main point in issue is whether or not the Claimant in this dispute 'is entitled to additional compensation when taken off his own territory and used on another territory to perform work which is part of another assignment." (Page 4 of Record — Brotherhood Ex Parte Submission.)

The Brotherhood contends that Carrier violated more particularly Rule 3 of the Agreement in that it required the Claimant to perform work outside of his designated territory and for that reason the Claimant is entitled to payment for such services.

Rule 3 of the Agreement reads as follows:

> "Signalman, Signal Maintainer. An employe assigned to perform work generally recognized as signal work as outlined in this agreement shall be classified as a signalman or signal maintainer.
>
> NOTE: Signal maintainer referred to in Rule 3 shall mean an employe assigned to a specific territory and/or plants.
>
> A signalman shall mean an employe working in a gang."

In Award 14100 (House), which was between the same parties and in which dispute the Brotherhood raised the same question, we held:

"Brotherhood's argument is that since the two signal employes who should have been borrowed would not have been working in a shop they would have to have been working as a 'signal gang.' **A normal reading of the 'Note' to Rule 5 does not indicate that it was intended to be an absolute definition of 'signal gang,' but rather that it provide a means for distinguishing the title 'signal maintainer' from the title 'signalman'**; . . ." (Emphasis ours.)

The only difference between the "Note" provision in the above rule and the rule before us is the number. In the instant case the rule is known as Rule 3.

The Brotherhood claims a violation of Rule 11. It reads as follows:

"Absorbing Overtime. Employes will not be required to suspend work during regular working hours to absorb overtime."

This Board on previous occasions has construed the meaning of the rule. In Award 13192 (Coburn), we held:

"To support the charge of rule violation, the Employes must show that a Claimant has been required to suspend work on his assignment and to perform the work of another position which, otherwise, would have to have been performed on an overtime basis by the incumbent of the latter position. Awards 7167, 5331.

The record in this case establishes that neither of the Claimants was required to suspend work on his assignment. Each worked his regular hours and no one, including the incumbent of Position No. 98, worked any overtime. The fact that additional duties may have been imposed upon Claimants and that they were required to work inside or outside is not material. That Carrier management may add to, subtract from or otherwise change the duties of a position and even require those duties to be performed at two different locations, as a general proposition, has been settled on this property. (See Award 8428, involving these same parties.) Nor is there any rule in the Agreement before us which expressly or impliedly required this Carrier to pay the punitive rate for work which can properly be accomplished at the straight time rate. (Cf. Award 7227.)"

It is mandatory for the Claimant, in order to support a claim under this rule, to show that the suspending of work was to "absorb overtime." The record in this case is barren of any evidence to support or sustain any such intention or result.

See also Awards 14080 (Dorsey); 13218 (Coburn); 12332, 12333 (Dolnick); 11781 (Hall); 12467 (Kane).

A violation of Rule 23 is also claimed. The part of that rule which primarily concerns us, is as follows:

"(a) Monthly Rated Employes. Foremen and Signal Maintainers will be paid the monthly rate specified in Rule 22 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 re-

ferred to in Rule 22, which shall constitute compensation for all services rendered except as hereinafter provided in this rule." (Emphasis ours.)

There is no dispute but that the Claimant is one of the employes coming within the purview of Rule 23. There can be no question but that Rule 23 is a special rule and covers monthly rated employes.

It is a well established rule and/or principle of contract law that in construing and/or interpreting a contract we look to the whole agreement to ascertain the intention of the parties to it.

It is also a well established rule and/or principle of law that where in an agreement there are general and special provisions, the special provisions prevail over the general rules in the agreement.

This Board has followed this rule and/or principle of law on any number occasions.

In Award 6651 (Rader), we held:

". . . It is the general rule in construing of all contracts that a specific provision dealing with a certain condition will prevail over other rules dealing with certain phases of the situation in a general manner and relatng to overall matters which may arise. . . ."

In Award 7312 (Rader), we held:

"In construing special rules . . . the same take precedence over general rules in an agreement. . . ."

See also Awards 8457 (Coburn); 9375 (Stone); 9967 (Weston); and 10006 (McMahon).

The parties to the Agreement fixed a monthly rate for "all services rendered." Had they intended otherwise the rule should have so provided.

In construing a written contract the words employed will be given their ordinary and popular accepted meaning, in the absence of anything to show that they were used in a different sense.

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This Board has followed this rule of construction in previous awards.

In Award 11485 (Hall), we said:

"The rules of contract construction require that unless indicated otherwise, words used in a contract are to be interpreted in their normal and popular sense."

See also Award 11757 (Dorsey).

The power of the Board is limited to interpreting agreements made between the parties. We have no power to alter, amend or add to the terms the parties agreed upon.

See Awards 6757 (Parker); 6856 (Carter); 10581 (Russell).

The meaning of the word "all" in the Agreement cannot be ignored. It is defined in Webster's as "The whole number, quantity or amount, wholly and completely." We therefore hold that in construing the provisions of Subdivision "(a)" of Rule 23, the parties intended that the monthly rate of pay shall constitute compensation for whole number, quantity or amount of and complete service performed by the employe.

With respect to the other provisions of Rule 23, we find that they are not pertinent to the issue before us, with the possible exception of (h) and that provision is not pertinent in that the Claimant was not required to perform any service on the sixth day of his work week.

With reference to Rule 39, Bulletin Rule we held in Award 13195 (Coburn), as follows:

> ". . . A job bulletin is merely an advertisement and not in the legal sense, an offer, the timely acceptance of which would constitute a binding contract. Its nature is informational, not contractual. It cannot be employed to create, modify or destroy legal relations such as those embodied in the basic Agreement between these parties. (Cf Awards 10095 and 11923.) Accordingly, the Board finds of no force or effect the bulletin evidence offered to describe work giving rise to an exclusive contractual right."

In Award 13201 (Zack), we held as follows:

> ". . . (that) Carrier has the right to require the incumbent of a position to work at two locations even though the original bulletin of the position specified work in only one location."

See also Awards 13207 (McGovern); 6395 (McMahon); 10603 (Dolnick); 12332 and 12333 (Dolnick).

We hold that the Claimant was properly paid for "all services rendered" and is not entitled to the "overtime pay" requested, as we have interpreted the phrase "all services rendered" to include overtime.

See Awards 6450 (Whiting); 11574 (Hall); 10968 (Dorsey); 11479 (Hall); 12637 (Seff); 12467 (Kane); and 10766 (Russell).

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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.

DISSENT TO AWARD NO. 14242
DOCKET NO. SG-14735

The Majority, the Referee and the Carrier Members, have committed multiple errors in their award, the first, and perhaps most glaring which, is found in the first paragraph of their opinion in their finding that:

> "The Claimant was a monthly rated Signal Maintainer with regular assigned working hours from 8:00 A. M. to 12:00 Noon, and from 1:00 P. M. to 5:00 P. M. He performs regular signal maintenance work six days per week — Monday through Saturday." * * *

Rule 23 (h) of the parties' Agreement provides:

> "Such monthly rated employes will not be required to perform ordinary maintenance or construction on the sixth day of the work week. Only emergency service will be required on such sixth day."

Thus having set the stage for a comedy of errors, they proceed to misinterpret and misapply more of the parties' Agreement. For example, they hold that a Signal Maintainer's monthly rate is complete compensation for all services rendered even though such employe may be worked off his assigned territory during or outside of his regular work hours; they state:

> "It is a well established rule and/or principle of contract law that in construing and/or interpreting a contract we look to the whole agreement to ascertain the intention of the parties to it."

and:

> "The parties to the Agreement fixed a monthly rate for 'all services rendered.' Had they intended otherwise the rule should have so provided."

The inconsistency and error of their award becomes readily apparent when one reads the Agreement as a whole. Rule 3 of the Agreement states in part:

"NOTE: Signal maintainer referred to in Rule 3 shall mean an employe assigned to a specific territory and/or plants. * * *"

Rule 23 (a):

"* * * Signal Maintainers will be paid the monthly rate specified in Rule 22 * * * which shall constitute compensation for all services rendered except as hereinafter provided in this rule."

In other words: An employe assigned to a specific territory or plants will be paid the monthly rate specified which shall constitute compensation for all services rendered * * *. Such provision affords the carrier on specified days around the clock maintenance protection of its signal system for a fixed cost; for this privilege, it has agreed to confine the employe's assignment to a specific territory and/or plants. We believe it patent that when the employe is removed from his privilege, i.e., his specific territory and/or plants, the carrier has forfeited its privilege under the "all service rendered" provision of Rule 23.

for the foregoing and other reasons, Award No. 14242 is palpable error; therefore, I dissent.

W. W. Altus
Labor Member — 3/25/66

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