Award No. 15993
Docket No. SG-15596

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company that:

(a) Mr. C. G. Garlington be paid at his respective rate of pay on the overtime basis for a total of 42 hours and 30 minutes — in addition to what he has been paid for January 1 through 8, 1964 — for overtime worked in restoring the communications lines not a part of his regular assignment, as provided for in Rule 49 of the Signalmen's Agreement.

(b) Mr. J. E. Stewart be paid at his respective rate of pay on the overtime basis for a total of 73 hours and 30 minutes — in addition to what he has been paid for January 1 through 23, 1964 — for overtime worked in restoring the communications lines not a part of his regular assignment, as provided for in Rule 49 of the Signalmen's Agreement.

[Carrier's File: SIG 482]

EMPLOYES' STATEMENT OF FACTS: On this property employes working under the Signalmen's Agreement perform only the signal work; others working under another agreement perform the communications work.

This dispute arose because Carrier assigned monthly rated employes — a Signal Inspector, Mr. J. E. Stewart, and a Relay Repairman and Relief Maintainer, Mr. C. G. Garlington — during the period, from January 1-23, 1964, to work extra time without additional pay in repairing communications lines that were damaged during an ice storm and restoring communications circuits.

Each was paid, in addition to his monthly salary, at his overtime hourly rate, for the twelve (12) hours he worked on Sunday, January 5; however, neither was paid for the other overtime he was required to devote to the communications restoration job. Carrier failed to pay Mr. Garlington for forty-two and one-half (42½) hours' overtime in the designated period; it likewise did not pay Mr. Stewart for seventy-three and one-half (73½) overtime hours.

ment, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 31, 1963 a very severe ice storm struck the southern part of the country. Throughout Georgia and portions of Alabama several hundred poles which held Carrier's signal and communications wires were downed. Hundreds of men were called to untangle the downed wires, install new poles and crossarms, and restore the lines.

Among those assisting were Claimants, monthly rated employes — Mr. Stewart, a Signal Inspector and Mr. Garlington, a Relay Repairman and Relief Maintainer — both covered by the Signalmen's Agreement.

Claimants, through the Petitioner, filed claims for compensation at the overtime rate for hours worked in assisting in the repair of Carrier's communications lines. The claim on behalf of Mr. Stewart is for 73.5 hours, and 42.5 hours on behalf of Mr. Garlington.

Petitioner contends that Claimants were entitled to be compensated under the terms of Rule 49 of the Agreement for work Carrier required them to perform which was outside their regular hours and not within the purview of their assignments under the terms of the Signalmen's Agreement.

Carrier asserts that the claims must be dismissed on three grounds: (1) Petitioner has failed to comply with the procedural requirements of Article V of the November 5, 1954 Agreement in that the claims are vague and indefinite because no specific dates were claimed; (2) Carrier fully complied with the Agreement, and particularly Rule 49, when it compensated the monthly rated Claimants for "all services performed;" and (3) Petitioner, in any event, has failed to meet its burden of proof with probative evidence that Claimants worked on communications lines and communications circuits.

I.

We shall consider first the question of whether Petitioner failed to comply with the procedural requirements of Article V of the November 5, 1954 Agreement. Carrier contends that Petitioner's failure to specify the amount of time or pay claimed on each and every date bars the claims.

In its Ex Parte Submission, Petitioner provides a breakdown of the hours of overtime claimed as follows:

	J. E. STEWART	C. G. GARLINGTON
January	1 — 13.0 hours	10.5 hours
	2 — 8.5	8.5
	3 — 7.5	4.0
	4 — 12.0	12.0
	6 — 3.0	3.0
	7 — 4.5	3.0
	8 — 1.5	1.5

9	—	2.5	
10	—	3.0	
13	—	2.0	
14	—	2.0	
15	—	2.0	
16	—	3.0	
20	—	2.5	
21	—	2.5	
22	—	2.0	
23	—	2.0	
		73.5 hours	42.5 hours"

Petitioner contends that this breakdown was reproduced from Claimants' time tickets which were considered in conference between the parties on July 15, 1964. Carrier takes exception to the breakdown and rejects the utilization of "alleged overtime tickets" (Emphasis Carrier's) not only because the claims were still vague and indefinite, but also because "It was only in that conference, for the very first time, that the General Chairman even attempted to overcome the fatal defects of his claim."

It is clear from the correspondence exchanged on the property (particularly the letter of Carrier's Director of Personnel to the General Chairman dated July 20, 1964) that Carrier had access to the "Time and Overtime" tickets relied upon by Petitioner. The Board is satisfied, therefore, that the question of a vague and indefinite claim is without merit; and that under the facts and circumstances of this case, the underlying purpose of Article V of the November 5, 1954 Agreement has been satisfied.

II.

We consider next the question of Rule 49 (a), and quote the pertinent portion as follows:

> "**Except for service on rest days, the above salaries cover all services performed.** These employes shall have one regularly assigned rest day each week, which shall be Sunday. When service is required on the assigned rest day, it shall be paid for, in addition to the monthly rate, at the overtime rate in accordance with rules of the agreement applying to hourly rated employes. **No overtime will be worked and no work will be required on the sixth day of the work week or on holidays by these classes of employes unless in case of emergency on their regular assignments**; if worked on such days not in emergency on their regular assignments, overtime rate shall apply as above." (Emphasis ours.)

Petitioner states its position relative to Rule 49 as follows:

> "It is the position of the Brotherhood that Carrier violated the current Signalmen's Agreement, particularly Rule 49, when it refused to pay Signal Inspector J. E. Stewart and Relay Repairman and Relief Maintainer C. G. Garlington the overtime— 73.5 hours and 42.5 hours, respectively — which occurred when they were required to perform service outside their regular hours doing work not within the comprehension of their assignments and not covered by the Signalmen's

Agreement. During the period from January 1 to January 23, 1964, they helped restore communications circuits which had been destroyed in a severe ice storm."

Carrier's position is stated as follows:

"The two claimants, a Signal Inspector and a Relay Repairman-Relief Maintainer, are listed under Paragraph (a) of Rule 49 quoted above, and it is clearly stated in the rule that their monthly rate of pay covers all services performed in emergency Monday through Saturday. The rule also states that when service is required on their rest day, which was Sunday, it shall be paid for, in addition to the monthly rate, at the overtime rate in accordance with rules of the agreement applying to hourly rated employes. The two claimants have been paid in strict keeping with Rule 49 during the entire period of this emergency caused by the ice storm. The claim is obviously without merit, and Carrier emphatically denies and rejects the Brotherhood's assertions and contentions."

To accept Carrier's contention that the phrase "all services performed" gives it the prerogative to utilize an employe covered by the Signalmen's Agreement for services of any nature including those clearly not within the purview of that agreement violates the reasonable and intended meaning of collectively bargained agreements. It is clear that the phrase "all services performed" means **all signal services performed;** and if Petitioner meets its burden of showing that services other than signal services were performed without compensation, then Rule 49 (a) was violated.

III.

Without need to cite precedent, it is axiomatic on this Board that Petitioner has the burden to provide evidence of probative value sufficient to support the claim. In the instant case, Petitioner must establish facts sufficient to permit a finding that Claimants were required during the overtime periods in question to perform "communications" work.

In an attempt to meet its burden, Petitioner relies on a letter written by Claimant Stewart to the General Chairman dated February 8, 1964 advising the General Chairman that all of the overtime work was "made account of ice storm repairing communication lines on three districts." Claimant Garlington provided no such letter. Petitioner also provides a breakdown of 17 overtime periods worked between January 1, 1964 and January 23, 1964.

Although Carrier inferentially concedes that Claimants may have performed communications work ("Where you have a disastrous ice storm with signal wires, communications wires * * * down and entangled in most instances, common sense dictates that signal and communication forces be combined and worked together"), it denies the accuracy of the contents of Claimant Stewart's letter.

In an attempt to rebut any evidence that Claimants did communication work, Carrier relies on the fact that Claimant Garlington showed his time worked on I. C. C. Account No. 249 (signal maintenance work), and Claimant Stewart's time was shown partly on I. C. C. Account No. 249 and partly on I. C. C. Account No. 247 (communication work). With respect to Claimant

Stewart, he indicated that out of a total of 17 overtime periods, 14 were signal work and 3 were communication work. Thus, by their own admission Claimant Garlington did no communication work and Claimant Stewart performed communication work during only 3 overtime periods.

On the basis of the record before us, the Board finds that Claimant Garlington is not entitled to any additional compensation, and Claimant Stewart is only entitled to be additionally compensated for the 3 overtime periods which were indicated on I. C. C. Account No. 247.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement as to Claimant Garlington.

That Carrier violated the Agreement as to Claimant Stewart only to the extent of 3 overtime periods.

AWARD

Claim of Claimant Garlington denied.

Claim of Claimant Stewart sustained consistent with the Opinion and Findings of this Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1967.

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