Award No. 17000
Docket No. SG-17464

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (former Pacific Electric Railway Company) that:

(a) The Southern Pacific Company violated the current agreement between the Pacific Electric Railway Company and its employes represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949 (including revisions to May 16, 1951) when it failed and/or declined to apply Rule 13(f) in computing payment of compensation for Leading Signalman R. L. Minard; Signalmen J. R. Batema, J. D. Blyeth, J. E. Duff, and C. R. Hunt, with headquarters at Dominquez, California); and Leading Signalman J. J. Bauman; Signalmen H. Dennis, C. J. Jones, and G. E. Mitchell, (headquarters at Macy Street, Los Angeles, California) on August 6 and 7, 1966.

(b) Messrs. R. L. Minard, J. R. Batema, J. D. Blyeth, J. E. Duff, and C. R. Hurt be allowed fourteen and one-half (14½) hours each at the time and one-half rate of their respective assignments for August 6 and 7, 1966.

(c) Messrs. J. J. Bauman, H. Dennis, C. J. Jones and G. E. Mitchell be allowed eleven and one-half (11½) hours at the time and one-half of their respective assignments for August 6 and 7, 1966.

[Carrier's File: 214-GEN (2)]

EMPLOYES' STATEMENT OF FACTS: On Saturday, August 6, 1966, Carrier called claimants and instructed them to report for duty at 6 A. M. Sunday, August 7, 1966. Carrier paid them for the service they performed after reporting for duty on August 7th. The instant claim is based on our contention that under the language of Rule 13(f), Carrier should be required to pay them from the time called.

The claim was initiated October 3, 1966, subsequently handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving

handle matters of the former Pacific Electric Railway Company at the time, appealing the decision of Carrier's Division Superintendent, citing Rule 13(f) in support of his position that claim was valid, and with reference thereto stating in part, that:

> "* * * Rule 13(f) above is plain, clear and unambiguous. If the Company did not wish to pay the claimants for the time claimed, they could have either have notified the claimants while they were still on duty on Friday August 5, that they were to report for duty at 6:00 A. M. on August 7, or they could have called the claimants at 6:00 A. M. on August 7 to report for work. The Company elected to do neither of these, and therefore must pay the claimants the time claimed in paragraphs B and C of this claim."

It was further stated that "It is our desire that this claim be discussed in conference, in the event the Company does not see fit to allow it." This correspondence is reproduced and attached as Carrier's Exhibit D.

Claim was not allowed by Carrier's District Manager–Personnel; however, before any correspondence was prepared, conference on another matter was scheduled for December 5, 1966, and the General Chairman suggested that the instant claim also be discussed at that conference. This suggestion was acceptable to the Carrier, and Mr. L. A. Noble, Personnel Assistant, was designated to represent the Carrier in the absence of the District Manager–Personnel. Conference was held as scheduled, during course of which the General Chairman raised question as to the peculiar wording in the Pacific Electric rule in view of the fact that most agreements with which he was familiar specifically provided that pay would start when men reported. He was advised by Carrier representative that it was not known as to why the Pacific Electric rule was different, it being pointed out however that since the first agreement in 1935 the language had been the same, and that by personal knowledge of over twenty years the rule in question had been applied in the same manner as in the instant case where planned overtime was involved, and that because of such past practice the appeal was denied. This denial was confirmed by letter dated December 9, 1966, which is reproduced and attached hereto as Carrier's Exhibit E.

Effective January 1, 1967, designation by the Carrier of its Chief Operating officer to handle matters of the former Pacific Electric Railway Company was changed from the District Manager–Personnel to Mr. W. T. Jensen, Assistant Manager of Personnel.

On January 23, 1967, the General Chairman advised Carrier's Assistant Manager of Personnel that decision by the District Manager–Personnel was declined. Copy of this correspondence is reproduced as Carrier's Exhibit F.

(Exhibits not reproduced.)

OPINION OF BOARD: On Saturday, August 6, 1966, Carrier called Claimants and instructed them to report for duty at 6:00 A. M., Sunday, August 7, 1966. Carrier paid them for service they performed after reporting for duty on August 7th. Claim has been submitted based on the contention that Rule 13(f) of the Agreement is applicable and that Carrier should accordingly compensate Claimants from the time they were called.

Rule 13(f) provides:

"Rule 13(f). Calls: Hourly rated employes notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40) minutes at the time and one-half time rate. All time held in excess of two (2) hours and forty (40) minutes will be considered and paid for as overtime hours, computed on the actual minute basis. The time of employes so notified prior to release from duty will begin at the time required to report and end when released. **The time of employes so called after released from duty will begin at time called and end at the time they return to designated point at home station.**

Employes off duty will respond promptly when called. They will provide the Signal Engineer with their home address.

Employes will be free to leave their homes after tour of duty and will not be required to hold themselves in readiness for calls." (Emphasis ours.)

There is no question that the Claimants were called after they had been released from duty and Petitioner argues that the underlined portion of the above cited rule is germane to the issue presented.

The main contention advanced by the Carrier is that past practice on the property militates against the position assumed by the Organization. Evidence of past practice is demanded when we have a rule so vague, indefinite, and ambiguous that we are required to look to the experience of the parties over a protracted period of time in an effort to determine the basic intent of the parties when the specific language was adopted and the interpretation given thereto to make such language a viable instrument by which both parties may be appropriately guided.

Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such a practice did in fact exist. To be sure, Carrier has stated categorically both on the property and in their submission to this Board that the practice has been other than the position adopted by the Organization. In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it.

Carrier also propounds the arguments and assumes the posture that the "call" in this case was not a "call" within the purview of the rule upon which reliance is made by the Organization. Implicitly the Carrier is requesting that we take "Judicial notice" of the word "call", that the understanding of the word "call" is so well known and notorious that the "call" in this case is foreign to its originally intended meaning. Again, there is no such evidence in this record. The best that can be said is that the rule cited by the Organization is different from the ordinary, standard "call" Rule with which we have been confronted many times. The underlined language of Rule 13(f) is so clear and so unambiguous as to defy the necessity for further elaboration. We will sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March 1969.

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