Award No. 17044
Docket No. SG-17372

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet and Eastern Railway Company that:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 19(b) and (e), when it failed to pay Mr. R. Johnson, Signalman, his overtime rate for service following and continuous with his regular hours on February 24 and 25, 1966.

(b) Carrier now pay Mr. Johnson the difference between his overtime rate and straight time rate for all hours worked outside his regular working hours on February 24 and 25, 1966 — a total of sixteen (16) hours at $1.5324 per hour, for a total of $24.5204.

[Carrier's File: RS-3-66]

EMPLOYES' STATEMENT OF FACTS: Claimant R. Johnson is a Signalman on signal gang No. 5, with regular assigned working hours 7:30 A. M. to 4:00 P. M., less 30-minute lunch period.

On February 24 and 25, 1966, after working his regular 8-hour shift, Claimant was required to work the second shift at the Gary, Indiana, hump yard, in absence of the regular second trick man, Mr. R. Grant, whose regular assigned hours are from 4 P. M. to midnight.

Carrier paid claimant the straight time rate of pay for all work performed on these two days. We contend Carrier should have paid him the time and one-half rate of pay for the second trick.

Claim on behalf of Mr. Johnson for sixteen hours at one-half the regular rate of pay was initiated April 8, 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 satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 9.

of pay for such hours, or where such time is now included under existing rules in computations leading to overtime."

(Exhibits not reproduced.)

OPINION OF BOARD: The record discloses that on February 24 and 25, 1966, Claimant worked his regularly assigned shift from 7:30 A. M. to 4:00 P. M. The occupant of the second shift was absent on vacation. At Carrier's request, Claimant worked the second shift beginning at 4:00 P. M. and ending at midnight for each of said dates. Claimant was paid at the straight time rate for all work he performed on the two involved dates. The Organization contends Claimant should have been paid at the time and one-half rate for the work he (Claimant) performed on the second shift. In support of this claim, the Organization relies on Rules 19(b) and 19(e) of the Agreement, which are:

"Preceding or Following and Continuous with Regular Hours

(b) Time worked preceding or following and continuous with the regularly established working period shall be computed on the actual minute basis and paid for at the rate of time and one-half, with the double-time rate computed on the actual minute basis after sixteen (16) continuous hours of service in any twenty-four (24) hours period. Employes required to work continuously from one regular work period into their next regular work period shall be paid eight (8) hours at the time and one-half rate and thereafter at the rate of time and one-half or double time as the case may be until relieved from the service for which called.

Overtime Provisions.

(e) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another, or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 11 of this Agreement.

Employes worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 11 of this agreement. It is understood that monthly rated employes will be paid in accordance with Rule 57(b).

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime."

Carrier contends that this claim should be denied because the Vacation Agreement does not require Carrier to pay the time and one-half rate to an employe who works the vacation employes shift in addition to his regularly assigned shift. Carrier also relies on Referee Wayne Morse's interpretation of Art. 12(a) of the Vacation Agreement.

This Board finds that the Referee Wayne Morse's interpretation applies only to a "transferred" employe which is not involved in this case. The Claimant in the instant dispute was not transferred from his shift — he merely worked double time.

This Board finds that it was not the intention of the parties signatory to the Agreement to deprive an Employe of his right to the time and one-half rate of pay when he works an additional number of hours to that of his own shift. We find that Second Division Award 1804, which was presented to this referee for consideration, is not in point for the reason that the employe in that dispute was transferred to another position, causing him to work a number of hours in excess of his previously assigned position. The same is true with Third Division Award 9083. Third Division Award No. 14324 involves an Employe who requested work at a higher rated position during the relieved Employe's vacation. Third Division Award No. 15785 is not significant to this case and Award 3019 of Second Division is inconsistent with Awards 8395, 12819 and 14599 of Third Division, which this Board finds to contain the better reasoning.

To find otherwise would be to make a nullity of the 40 hour week concept which we believe to be the prevailing condition to the parties of this contract. This Board, therefore, finds that Claimant should be paid his overtime rate for service he performed on behalf of Carrier continuous with his regular hours or February 24 and 25, 1966.

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 26th day of March 1969.

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