



Award Number 17474

Docket Number SG-17840

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, 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 that:

- (a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958, including revisions) when it failed and/or declined to apply Rule 15, which resulted in the violation of Rule 70, when it did not assign overtime work to Mr. Reisinger on April 23, 1967. The work in question here, is work which Mr. Reisinger ordinarily performs during straight time hours, but the Company elected to assign this work to the Elk Grove Signal Maintainer during over time hours in preference to Mr. Reisinger.
- (b) Mr. W. H. Reisinger be allowed not less than two (2) hours and forty (40) minutes at his assigned overtime rate for April 23, 1967.
- (c) In future instances when it is necessary that material required from the Sacramento Signal Shop be delivered after regular working hours, or on rest days and holidays, the handling of such material be assigned to the employees who are regularly assigned to the Sacramento Signal Shop, and who are covered by the Classification Rules of the Signalmen's Agreement.

(Carrier's File: SIG 148-157.)

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because a signal maintainer, at the direction of his superior, entered the Sacramento signal shop and disconnected a GCP rectifier from a test unit for use on his territory. This occurred during the off hours of Claimant—leading signalman W. H. Reisinger, who is assigned to the signal shop and who was available for the call.

Claimant Reisinger is responsible for the testing and repairing of GCP rectifiers such as the maintainer removed from the shop.

The Sacramento Signal Shop is under the direction of the Signal Engineer and is, for all practical purposes a separate seniority district.

Notwithstanding the fact that Claimant, as the occupant of the position in the signal shop, had a right to overtime work occurring in the shop in preference to the Elk Grove signal maintainer, the Carrier has refused to pay the instant claim.

hours, rest days and holidays, an employee covered by the Signalmen's Agreement and assigned to the Sacramento Signal Shop be called to open the shop."

4. By letter dated May 22, 1967 (Carrier's Exhibit "B"), Carrier's Signal Engineer denied the claim.

5. By letter dated June 26, 1967 (Carrier's Exhibit "C"), Petitioner's General Chairman appealed the claim to Carrier's Manager of Personnel, who denied same by letter dated July 27, 1967 (Carrier's Exhibit "D"), on the basis that:

"There is no rule in the agreement covering signalmen that precludes a signal maintainer from being properly required to secure material necessary to the performance of his work as in the instant case, or that would require that the claimant be called in these circumstances to perform any portion of this work.

"The unspecific and unsupported assertions contained in your letter with regard to alleged activities of a supervisory position at the Sacramento Signal Shop, are without factual basis."

Copy of General Chairman's reply to that letter, dated September 15, 1967, is attached as Carrier's Exhibit "E".

(Exhibits not reproduced)

OPINION OF BOARD: Claimant here asks for overtime at his assigned rate due to the fact that another employee was sent into the signal shop to which Claimant was assigned during Claimant's off hours for a piece of equipment. The claim is made that Claimant should have been called for this work, and lacking that, should now be compensated therefor.

It is too well established by a preponderance of awards from this Board that we can only look to the Agreement to ascertain the contemplation of the parties in this regard. The instant agreement is silent on this point, and to effect a change on this Line, it is incumbent upon both parties to collectively so bargain. (See Awards 1571, 3419, 5520, 8073, 11587, 14500, 14975, 16667.)

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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.

Dissent to Award 17474, Docket SG-17840

The record in this case adequately established that if the rectifier in question had been removed from the test panel during Claimant's assigned hours, Claimant would have removed it. This fact plus the precedents cited to the Referee in support of the proposition that overtime belongs to the incumbent warranted an award sustaining the claim. To deny the case on the grounds that the particular work and fact situation is not spelled out in the Agreement is simply a display of rank legalism. Therefore, I dissent.

/s/ **G. ORNDORFF**
G. Orndorff
Labor Member