

Award No. 18048

Docket No. SG-18113

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Gene T. Ritter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Denver and Rio Grande Western Railroad Company:

On behalf of Signal Maintainer H. H. Swartz, headquartered in Rifle, Colorado, for one (1) hour's overtime May 1, 1967; three (3) hours and thirty (30) minutes' overtime May 2, 1967; three (3) hours' overtime May 3, 1967; three (3) hours and thirty (30) minutes' overtime May 4, 1967; three (3) hours and thirty (30) minutes' overtime May 5, 1967; one (1) hour and thirty (30) minutes' overtime May 15, 1967; three (3) hours' overtime May 16, 1967; three (3) hours' overtime May 17, 1967; two (2) hours' overtime May 18, 1967; three (3) hours and thirty (30) minutes overtime May 19, 1967, for overtime work performed on his maintenance territory by the Signal Maintainer from the adjoining territory when Signal Maintainer Swartz was available and should have been called in accordance with the provisions of Rule #20. [Carrier's File: SG-4-67.]

**EMPLOYES' STATEMENT OF FACTS:** During May 1967, a heavy Maintenance of Way machine known as a ballast tamper was operated on the assigned territory of signal maintainer H. H. Swartz, with headquarters at Rifle, Colorado.

It was decided by the Carrier that Automatic Block Signal protection would be provided for the machine during the operation and the signal maintainer from the adjoining territory was assigned to provide this protection while the machine was operated on the territory of signal maintainer Swartz on the dates involved in the instant claim.

Rule 20 of the Signalmen's Agreement (effective March 15, 1953) reads as follows:

**"RULE 20. SUBJECT TO CALL:** Employees assigned to regular maintenance duties will notify the person designated by the man-

Organization is a party to the August 21, 1954, National Agreement. Article V, 1 (a), provides that all claims or grievances must be presented in writing by or on behalf of the employe involved to the officer of the carrier authorized to receive same within 60 days from the date of the occurrence on which the claim or grievance is based. It was on this language that I based my conclusion that the claim at hand account not so handled was considered by me as barred, abandoned and denied.

"The claim remains barred, abandoned and denied.

Yours truly,

(Signed) J. W. Lovett  
J. W. Lovett  
Director of Personnel"

**OPINION OF BOARD:** During the month of May, 1967, Carrier caused a heavy Maintenance of Way machine known as a "ballast tamper" to be operated on Claimant's assigned territory. Carrier decided to provide Automatic Block Signal protection during this operation and, while Claimant was working his regular assignment, Carrier called in a Signal Maintainer from an adjoining territory to handle the automatic block signal protection. The Organization relies on Rule 20 of the Agreement to uphold this Claim, which is:

"RULE 20. SUBJECT TO CALL: Employees assigned to regular maintenance duties will notify the person designated by the management of their regular point of call. When such employes desire to leave such point of call for a period of time in excess of two hours, they will notify the person designated by the management that they will be absent, when they will return, and, when possible, where they may be found. Unless registered absent the Company will make every effort to call the regular assignee.

If the Company holds employes on call they will be paid at the overtime rate for actual time held."

Carrier contends that this claim should be dismissed because it was improperly filed in that Claimant entered on time-rolls that he had actually performed flagging work involved herein, including overtime; that this action constituted a false representation and did not constitute a "claim" as contemplated by Article V, 1(a) of the August 21, 1954 National Agreement.

It is the opinion of this Board that Carrier's contention is well taken; this misrepresentation does not constitute a "claim" as contemplated by Article V, 1(a) of the August 21, 1954 National Agreement. If he (Claimant) had performed the work, as indicated on the timerolls, an entirely different question would have been presented to this Board for consideration. It, therefore, follows that this is a defect of both substance and form. Timerolls should reflect the highest degree of integrity and should reflect unquestioned accuracy. The timeroll does not constitute a claim as contemplated by Article V of the August 21, 1954 National Agreement.

Not having considered the inaccurate time roll as constituting a claim, it follows that no claim was filed for overtime flagging within the 60 days allowed under the Time Limit Rule, and, therefore, this claim is barred.

**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

Claim barred because of violation of Time Limit Rule.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

#### DISSENT TO AWARD 18048, DOCKET SG-18113

In the second last paragraph of the Opinion of Board the Referee saw fit to sermonize on the high degree of integrity and accuracy that should be reflected in timerolls thus implying that the method used by Claimant in filing his claim was designed to defraud the Company. The record disclosed, for all who could read, that from the very beginning Carrier understood Claimant was endeavoring to file a claim for overtime lost. As a matter of fact, his Supervisor suggested that: "\* \* \* You could have claimed time under item P&N W (Paid & not worked) & explained reason when making explanation. \* \* \*", indicating that the claim would have been acceptable if made at the right place on the time report.

The bald assertion that: "\* \* \* The timeroll does not constitute a claim as contemplated by Article V of the August 21, 1954, National Agreement." does not reflect either the attitude of the industry as a whole or the Third Division. Awards 10548 and 12391. Furthermore, the bald assertion has no place where, as here, the matter was referred to by Carrier representatives at every stage of handling on the property as a "claim".

In Award 17672 (Ritter) we said:

"\* \* \* This Board therefore concludes, in accordance with Award 16578 (Engelstein) that a claim was filed on May 19, 1967

in language sufficient to commence the tolling of the 60 days time within which Carrier was required to disallow. **To hold otherwise would permit Carriers to unilaterally determine the sufficiency of language contained in Claim notices.**" (Emphasis added)

This Award fails to deal with the dispute on the basis of the facts contained in the record; therefore, I dissent.

/s/ G. Orndorff  
G. Orndorff  
Labor Member