



Award No. 18604

Docket No. SG-18833

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COASTLINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

Claim No. 1

(a) The Carrier pay CTC Apparatus Inspector B. S. McGirt eight (8) hours over-time for each date, January 28 and 29, 1969, in addition to any compensation already received for said dates account required to suspend work on his regular assignment in order to absorb overtime, and for being used off his regular assignment in the signal shop performing construction work not of the classification of McGirt.

(b) The Carrier pay Mr. B. S. McGirt for four (4) hours overtime on January 28 and for one (1) hour overtime on January 29, 1969, in addition to any compensation he has already received or is entitled, for services performed outside signal shops and outside his regular assigned hours, or the amount of \$28.24.

(c) The Carrier pay Signal Maintainer M. E. Drury, McColl, S. C. for twenty-one (21) hours at his overtime rate, account CTC apparatus Inspector B. S. McGirt was used on his assigned territory on January 28 and 29, 1969, performing work of Signalman-Signal Maintainer classification.

(Carrier's File: 15-16; 15-12)

Claim No. 2

(a) The Carrier violated the current signalmen's agreement, particularly Rule 16 and letter of agreement dated September 5, 1951, spelled out on page 38 of said agreement, when CTC Apparatus Inspector B. S. McGirt was used to perform overtime work outside signal shops.

(b) The Carrier pay Mr. B. S. McGirt for overtime worked on February 18, 19, 20 and 21, 1969, a total of 17 hours and 5 minutes; And for 13 hours double time on February 20, 1969.

able signal employees, with signal gangs being diverted to Hamlet, as well as signal maintenance forces and employees of the Hamlet Signal Shop, including Signal Apparatus Inspector R. M. Adams and CTC Apparatus Inspector B. S. McGirt, who are paid a special monthly rate which is "compensation for all service rendered." In addition, employees of other crafts and outside forces were utilized.

CTC Apparatus Inspector McGirt was used, along with other shop employees, in assisting in performance of signal work and operating and attending the several standby generators. On February 18th and 19th, he worked with Signal Gang No. 6; on February 20th he operated and attended the standby generator to protect the Southern Bell automatic switching equipment at Hamlet passenger station, which duty he had requested; on February 21st he worked with Signal Gangs Nos. 2 and 8. He returned to work in the shop on February 24th.

During the period February 18-21, inclusive, Mr. McGirt, as well as all other signal forces and other employees, worked overtime.

On April 2, 1969, General Chairman Harper filed overtime claim in behalf of CTC Apparatus Inspector McGirt, identified as Claim No. 2 in Statement of Claim. No such overtime claim was filed in behalf of Signal Apparatus Inspector Adams.

Attached as Carrier's Exhibit "B" is correspondence exchanged on the property in connection with Claim No. 2.

Also attached as Carrier's Exhibit "C" is reproduction of the special agreement shown on page 38 of the current working agreement, specifying that Mr. McGirt's special monthly rate "will be compensation for all service rendered."

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts out of which the present claim arose are not indispute. On January 28 and 29, 1969, CTC Apparatus Inspector B. S. McGirt, a monthly rated employee assigned to the signal shop, was used outside the shop on the work of Signal Maintainer M. E. Drury in connection with a signal cutover. On February 18, 19, 20 and 21, 1966, he performed work outside of the shop in connection with ice storm damage to Carrier's signal pole line.

The issues raised by these facts are: (1) did Carrier have the right to utilize Claimant away from the signal shop, and, if so, (2) was Carrier required to compensate Claimant at the overtime rate for this service performed by Claimant?

We find no basis for the Organization's contention that Claimant could not be used away from the signal shop. The applicable Agreement is devoid of any provisions prohibiting the used of signal shop employees away from the shop. In fact, Rule 25 of the Agreement recognizes the right of Carrier to use monthly rated employees away from their home station provided they are reimbursed for the expenses incurred. This issue has been before the Board several times before, and we have upheld the Carrier's right to so utilize its employees. See Awards 18291, 18351, 16617.

The Organization contends that the letter Agreement, signed June 6, 1967, provides that the monthly rate for CTC Apparatus Inspector shall constitute compensation "for all services rendered," but that just means services in the Signal Shop. Once Claimant was utilized outside the shop, the Organization contends, he was entitled to overtime rates. The language of the letter Agreement is clear and unequivocal. It is evident that the parties here intended that CTC Apparatus Inspector's monthly rate of pay shall constitute compensation "for all services rendered," irrespective of where rendered. If the parties had intended to limit this compensation to work performed in the Signal Shop it could have so provided. This Board, however, is without authority to supply such a limitation. We must, therefore, deny the claim. See Awards 15172, 10968, 14242.

The Organization has proffered no contract violation in support of Signal Maintainer Drury's claim and consequently we are not supplied with any basis to uphold the claim; it must be denied.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.

Dissent to Award 18604, Docket SG-18833

The Majority, in order to reach its ridiculous Award 18604 had, first to misstate facts and, secondly, to ignore a firmly established principle of contract interpretation, i.e., that the parties to a contract will be deemed to have intended its application to be that of a reasonable mind.

The Majority's misstatement of fact is illustrated by their following contradictory sentences:

"We find no basis for the Organization's contention that Claimant could not be used away from the signal shop. * * **

"* * * * Once Claimant was utilized outside the shop, the Organization contends, he was entitled to overtime rates."

The Majority has in effect held that the parties negotiated widely differing monthly rates of pay, on widely different service time bases, for two different groups of employees, and assigned both groups the same liability to perform service without additional compensation. That holding ignores the clear language of the Agreement which, contrary to the present award, confines the location where service can be required under the monthly rate of the group including the Claimant to the Signal Shop, and it places on the Agreement an interpretation and application not the product of a reasonable mind.

Award 18604 is ridiculous error, and we dissent.

**W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member**

**CARRIER MEMBERS' ANSWER TO DISSENT TO AWARD NO. 18604,
DOCKET NO. SG-18833**

The right to dissent does not include the right to distort the record, which is what the dissenter attempts to do. Were it not for this, his intemperate outcries would be according the eloquent silent treatment that they deserve.

There certainly was no misstatement of facts by the majority, and the dissenter has not pointed to any. The two sentences of the Award, quoted out of context by the dissenter, are not contradictory. The Memorandum of Agreement of June 6, 1967, establishing monthly rates of pay for Signal Shop employees, provides:

"The monthly rates of pay now in effect will apply for the men named so long as they are employed in Signal Shops and will be compensation for all service rendered."

The term "compensation for all service rendered" is not restrictive.

Award 18604 correctly upholds the rule as written, is supported by ample precedent Awards of the Division, and adequately answers the outcries of the dissenter.

**P. C. Carter
P. C. Carter**

**R. E. Black
R. E. Black**

**H. F. M. Braidwood
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**W. B. Jones
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