Award No. 18654
Docket No. SG-18993

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GEORGIA, SOUTHERN AND FLORIDA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al.

In behalf of monthly-rated Signal Maintainer H. A. Cain, Valdosta, Georgia, for five (5) hours and forty (40) minutes overtime service which he performed on March 29, 1969, on hourly-rated signal maintainer position and territory not included in his bulletined assignment.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the present parties bearing an effective date of January 1, 1967 as to rates and rules effective February 16, 1948, except as otherwise stipulated therein, which is by reference made a part of the record in this dispute. Pertinent Rules of that Agreement provides:

"Overtime Rule 33:

(a) Overtime hours, continuous with regular working hours, shall be computed on the actual minute basis at the rate of time and one-half with double time after sixteen (16) hours of continuous service computed from the employe's regular starting time.

If an employe is required to render service beyond twenty-four (24) continuous hours, computed from his regular starting time, double time will continue. If an employe who has been at work for such twenty-four (24) hour period has completed the work which was necessary to be performed, he may be relieved from service or elect to continue working his regular shift; if he elects to continue working his regular shift or the remainder of his regular shift, he shall receive only the straight time rate for any subsequent part of his regular shift so worked.

Employes will not be required to work more than ten (10) hours without being permitted to have a second lunch period. Time taken for such lunch period shall not terminate the continuous service period and shall be paid for. Such lunch period shall be so much time as may be needful, not to exceed thirty (30) minutes.

was first called at 9:15 A. M. on March 29, 1969 to repair a signal at Milepost 114.9G which became inoperative as a result of a defective lamp receptacle. Mr. Cain was again called at 1:00 P. M. on March 29, 1969 to repair a model 7 switch circuit controller at Milepost 107.6G which was broken by the Speno ballast cleaning machine. While called out in the latter instance, a Maintenance of Way track patrolman found a broken rail at Milepost 116.0G and Mr. Cain bonded the rail after it had been changed out by Maintenance of Way forces.

Signal Maintainer Cain subsequently submitted to Mr. E. C. Logan, Signal and Electrical supervisor, a Form No. 111 on which he claimed pay for 5 hours and 40 minutes at the time and one-half rate which represented the amount he would have been entitled to for service performed on March 29, 1969 had he been employed as an hourly rated signal maintainer, rather than a monthly rated signal maintainer covered by the provisions of Rule 49 of the effective Signalmen's Agreement. By letter dated April 1, 1969, Signal and Electrical Supervisor Logan wrote Mr. Cain as follows:

> "This will acknowledge receipt of your form 111 for five (5) hours and forty (40) minutes at extra time rate for work performed on Saturday March 29, 1969, this time has been credited on your payroll toward your 211 & 2/3 hours for the month of March.
>
> Since you did not make or surpass the 211 & 2/3 hours for the month of March as required by rule forty-nine (49) as stipulated in your BRS of A agreement the extra time has been declined."

The decision of S&E Supervisor Logan was subsequently appealed by the Brotherhood's General Chairman through the usual channels up to and including the Director of Labor Relations, the highest officer designated by Carrier to handle such matters. Claim was declined by each of Carrier's officers as it was without basis and unsupported by the effective Signalmen's Agreement. Correspondence exchanged between the parties during handling of the dispute on the property, including letter addressed to Mr. Cain by Mr. Logan quoted herein above, is attached hereto as Carrier's Exhibits A through F.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant herein is a monthly rated Traveling Signal Maintainer, with headquarters at Valdosta, Ga. Signal Maintainer Parish also has headquarters at Valdosta. On Saturday, March 29, 1969, signal failures occurred on the assigned territory of Maintainer Parish. Attempt was made by Carrier to call Maintainer Parish to correct the signal trouble, but he was not available. The Carrier then called the claimant to correct the trouble.

Rule 49 of the applicable agreement reads in parts:

> "Employes assigned to the maintenance of a section, who do not return to home station daily and who are regularly assigned to perform road work and are paid on a monthly basis, shall be assigned one regular rest day per week, Sunday if possible. Past practice with respect to making an earnest effort to allow employes paid under this rule to be off on the seven recognized holidays without deduction

from monthly rate will be continued. Ordinary maintenance or construction work not required on Sundays prior to September 1, 1949 will not thereafter be required on the sixth day of the work week. Time off for a full day period on the sixth day of the work week or on holidays shall not be considered time actually worked or held for duty.

Except for service on assigned rest days, the monthly rate for such employes shall cover all service performed, including overtime, holiday service, and service on the sixth day of the work week, up to 211 2/3 hours in any calendar month. Actual time worked or held for duty, exclusive of assigned rest days, in excess of 211 2/3 hours in any calendar month will be paid for at the rate of time and one-half." Claimant's one regular assigned rest day per week is Sunday.

The Petitioner contends that Rule 49 applies to claimant only so long as he performs service on his assigned territory, and when used off his assigned territory he is entitled to be paid on the same basis as hourly rated employes.

Rule 49 of the Agreement clearly provides that the monthly rate shall cover all service performed, including overtime, holiday service, and service on the sixth day of the work week, up to 211 2/3 hours in any calendar month. The term "all service performed" is not restricted, and the Board has no authority to qualify it.

The Carrier states that on the date involved the monthly rated claimant was credited with the time worked toward his 211 2/3 monthly hours on the basis of one and one-half minute for each overtime minute worked, strictly in accordance with the provisions of Rule 49. Under the clear provisions of the rule, claimant is entitled to no additional compensation. See Awards 14242, 14243, 15172, 15173, and 15543.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 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 July 1971.

Dissent to Award 18654, Docket SG-18993

Award No. 18654 is in error. Under the Majority's holding the Carrier may demand, without extra compensation, the services of the monthly rated maintenance employe at any place until he has rendered 211 2/3 hours of service in the month. The Employes have shown that that is not the provision of the controlling Agreement rule by directing attention to the fact that the parties had to write a special provision to permit such employe to perform certain limited shop work and then only when at his home point. If the holding of the Majority is correct, such provision is a useless act, because under that holding the Carrier can require any work anywhere without special provision.

To interpret an agreement in such a way is contrary to well established and universally accepted rules of contract interpretation.

Award No. 18654 being in error, we dissent.

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

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