Award No. 18873

Docket No. SG-19051

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

(a) Carrier violated the Signalmen's Agreement, particularly Rule16—captioned

(a) Carrier violated the Signalmen's Agreement, particularly Rule 16 — captioned Overtime and Calls — and the letter agreement dated September 7, 1951, which is reproduced in the Signalmen's Agreement on page 38, when Senior Signal Apparatus Inspector J. A. Scarborough was used 9½ hours overtime on Saturday, June 21, 1969, his regular rest day, on assignment outside and away from signal shop, and was not paid for the overtime service which he performed.

(b) Carrier now pay J. A. Scarborough for 9½ hours at his overtime rate in addition to any pay which he has already received, for June 21, 1969.

(c) Carrier violated the Signalmen's Agreement, particularly Rule 16 (c), when Senior Signal Apparatus Inspector F. H. Clay was not given preference to the overtime worked by J. A. Scarborough on June 21, 1969.

(d) Carrier now pay F. H. Clay for 9½ hours at his overtime rate in addition to any pay he has already received, as a consequence of the violation.

[Carrier's File: 15-16].

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties to the dispute, bearing an effective date of July 1, 1967, as amended, which is by reference thereto made a part of the record in this dispute. Particularly pertinent and controlling rules of that Agreement are:

"Rule 16

(c) When overtime service is required of a part of a gang, the senior qualified employes in the class involved shall have preference to such overtime if they so desire.

You did not present anything new in support thereof and you were advised there was no reason for changing our decision of November 24, 1969."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant J. A. Scarborough was used for 9½ hours to load cable and deliver same from Ocala, Florida to the site of an emergency repair and to aid in the installation of the cable at that point. Saturday, the day involved, is the assigned rest day of Claimant Scarborough. Scarborough did not receive additional compensation for the aforementioned work in that Carrier believes that under the special agreement between the parties Claimant's monthly salary is compensation for "all services rendered" which services would include those performed in the instant case. The Organization maintains that the special agreement refers only to services performed in the signal shop.

We have read the Agreement between the parties carefully and must come to the conclusion that the Organization must prevail. The Agreement reads,

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

When the Carrier elected to utilize Claimant Scarborough away from the shop on the line of road it was obliged to look to the general agreement between the parties as to the compensation of a employe on his rest day. We realize that this interpretation is in direct contradiction with that rendered in Award 18604. It is only after careful consideration and study that we decline to follow that award.

Part (c) and (d) of the claim submitted are without merit in that Rule 16 (c) applies only to gangs. We have correctly held in the past that the shop force is not a "gang" within the intent of the parties.

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 as to parts (a) and (b) and denied as to parts (c) and (d).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.

DISSENT OF CARRIER MEMBERS TO AWARD 18873, DOCKET SG-19051
(Referee Franden)

The referee has declined to follow prior Award 18604, involving the same parties, the same letter Agreement and a similar claim on the flimsy excuse that:

> "We realize that this interpretation is in direct contradiction with that rendered in Award 18604. It is only after careful consideration and study that we decline to follow that award."

Award 18604 was not erroneous. In pertinent part it read:

> "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 conclusion reached in the foregoing quotation from Award 18604 was supported by the Awards cited therein and others of this Board that have considered rules providing for compensation for all service rendered. See, for example, Awards 15993, 15173, 14243, 12637, 11574 and 11479.

A fundamental principle which this Board should follow in order to alleviate much confusion in the railroad industry, thereby lending some semblence of stability to contract rules interpretation, is to adhere to a prior award involving the same issues, the same parties and the same rules unless it is shown that the prior award is palpably erroneous. In the instant case the refere did not adhere to Award 18604, which, as shown was amply supported by prior awards. Neither did he show that Award 18604 was in palpable error.

As ably stated in Memorandum to accompany Award 1680 — Referee L. K. Garrison:

> "* * * in the case of this Board the composition of the referees is not stable; one goes and another comes. If referee A reverses referee B upon the same set of facts, the same rule, and the same presented data, he is simply substituting his own personal judgment for that of B. If he does so, the identical question, arising between other parties, will inevitably be presented to referee C, who will then have to choose between the opinions of B and A. His choice will not determine the matter, for the question will again come up before D, and thus the matter may never end."

and as stated in First Division Award 15921 (Leiserson):

> "But whatever may be said about conflicting precedents in awards on different railroads, awards applying the same agreement rule on

a single carrier, on essentially the same facts, cannot be inconsistent. For if they were, then employes doing the same work and covered by the same agreement would not get equal protection of the rule. The present referee must therefore follow the ruling in Award 15780 and hold that here is no basis for an affirmative Award."

In Third Division Award 10912 (Boyd) it was held:

"In the furtherance of the Division's work, it is desirable that prior awards, if patently not erroneous, be followed. To do otherwise would lead only to chaos."

and in Third Division Award 4569 it was held:

"One of the basic purposes for which this Board was established was to secure uniformity of interpretation of the rules governing the relationship of the Carriers and the Organizations of Employes."

If the principles enunciated had been adhered to, Parts (a) and (b) of the Claim would properly have been denied. As it is, Award 18773 settled nothing. It only encourages further disputes on a matter that should be settled. It is in palpable error and we dissent.

P. C. Carter
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R. E. Black
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