

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20080
Docket Number SG-19725

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated the current Signalmen's Agreement in particular Rule 24, when it failed to properly compensate Maintainer Roy Hill for work performed in excess of sixteen (16) hours in connection with a derailment of Train 290 near M.P. 118 on Sunday, September 27, 1970.

(b) Maintainer Hill states he was called at 9:30 A.M. on Sunday, September 27, a rest day, and worked until 8:30 P.M. He resumed work at 11:00 P.M. and continued on duty until 10:30 P.M., September 28, 1970. He further states that the checkroll allowed time, as follows:

September 27 - 16:00 hours at time and one-half (1-½) rate
September 27 - 5:00 hours at double (2) time rate
September 28 - 6:30 hours at straight (1) time rate
September 28 - 6:30 hours at time and one-half (1-½) rate

(c) Rule 24 reads, in part, as follows:

"*** they will be paid at the rate of time and one-half computed on an actual minute basis, except that work in excess of 16 hours (the 16 hours to be computed within a spread of 24 hours from an employee's regular starting time of any day to the employee's regular starting time on the following day) shall be paid for at double time rate."

(d) The Carrier now be required to compensate Maintainer Hill by paying the differential between six and one-half hours at straight rate, and double-time rate; and by paying the differential between six and one-half hours at the time and one-half rate, and double time rate, at his applicable rate of pay, for work performed on September 28 as cited in part (b) of this claim.

(Carrier's File: 1-SG-287)

OPINION OF BOARD: The Claimant, a regularly assigned Signal Maintainer with a signal maintenance group headquartered at Allen, Kentucky, has assigned hours of 7:30 a.m. to 4:00 p.m., with rest days of Saturday and Sunday. On Sunday, September 27, 1970, he and his group were called out at 9:30 a.m. to perform overtime work in connection with a derailment. Most of the group, including the Claimant, were relieved at 8:30 p.m. on the same date. At 11:00 p.m. on the same date the Claimant was assigned to return to work at the derailment scene; he continued on duty until 10:30 p.m., Monday, September 28, 1970. For the thirty-four (34) hours of service rendered at the derailment, the Claimant was paid as follows:

Sixteen	(16) hours at time and one-half rate from 9:30 A.M. to 4:00 A.M.
Five	(5) hours at double-time rate from 4:00 A.M. to 9:00 A.M.
Six and one-half	(6½) hours at straight-time rate from 9:00 A.M. to 4:00 P.M.
Six and one-half	(6½) hours at time and one-half rate from 4:00 P.M. to 10:30 P.M.

The claim is that, under Rule 24 of the Agreement, the Carrier is required to pay the Claimant for the difference between straight time and double time for the six and one-half (6 1/2) hours worked from 9:00 a.m. to 4:00 p.m.; and for the difference between time and one-half and double time for the six and one-half (6 1/2) hours worked from 4:00 p.m. to 10:30 p.m., Monday, September 28, 1970. The Carrier asserts that the Claimant worked beyond sixteen (16) hours at his own volition and, hence, the method of payment was in accord with Rules 22 and 23 of the Agreement.

The agreement rules, in pertinent part, are as follows:

"RULE 24 -- CALLS, REPORTING AND NOT USED

(a) Employees released from duty and notified or called to perform service outside of and not continuous with regular working hours, will be paid a minimum of four straight time hours for two hours forty minutes work or less. If held on duty more than two hours forty minutes, they will be paid at the rate of time and one-half, computed on an actual minute basis, except that work in excess of 16 hours (the 16 hours to be computed within a spread of 24 hours from an employee's regular starting time of any day to the employee's regular starting time on the following day) shall be paid for at double time rate. The time of employees so notified will begin at the time required to report and end when released. The time of employees so called will begin at the time called and end at the time they return to designated point at home station.

(b) Employees reporting for work at a designated point but not used will be allowed not less than three hours at the pro rata rate."

"RULE 22 - REST DAY AND SPECIFIED HOLIDAY WORK
(Effective September 1, 1949)

(a) Work performed on assigned rest days and the following legal holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half, and if worked in excess of sixteen hours within a twenty-four hour period computed from the regular week day starting time on rest day or a holiday, double time will be paid until relieved, provided that an employee who is relieved after working beyond sixteen hours but elects to continue to work his regular shift, or the remainder of his regular shift, shall be paid at the regular rate applicable to his regular shift for any part of his shift worked after being relieved."
(Underscoring added)

"RULE 23 - OVERTIME AND TRANSFERRING ONE SHIFT TO ANOTHER

(a) Overtime hours either prior to or following and continuous with the regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half. Service performed beyond 16 hours (the 16 hours service to be computed within a spread of 24 hours from an employee's regular starting time of any day to an employee's regular starting time on the following day) shall be paid for at the double time rate until relieved, provided that an employee who is relieved after working beyond 16 hours, but elects to continue to work his regular shift, or the remainder of his regular shift, shall be paid at the regular rate applicable to his regular shift for any part of his shift worked after being relieved."
(Underscoring added)

If the Claimant was assigned work beyond sixteen (16) hours, Rule 24 applies and the Claimant was undercompensated for the work. If he worked beyond sixteen (16) hours of his own volition, Rules 22 and 23 apply and Carrier's method of compensation was proper.

The statements on whether the Claimant was released from duty and then decided to continue working of his own volition are in conflict. Carrier initially said the pertinent statements were made in the presence of certain Carrier officials; but later the Carrier said the pertinent statements

were made in the presence of a different individual, Leading Signal Maintainer T. W. McCormick. Also, the record reflects controversy over whether the Claimant was told he would be paid at straight time if he continued to work. Despite these conflicts the record makes it clear that the Claimant and Leading Signal Maintainer McCormick discussed the question of whether Claimant wanted to go home or continue working. Their statements read as follows:

Claimant's Statement

"At about 9:00 AM on Monday September 28, 1970, Mr. T. W. McCormick, Leading Signal Maintainer, came to me and asked me if I wanted to go home or continue working. I replied that I would work for a while but wanted to be relieved in time to go to the Hospital at Pikeville and see about my wife (she being a patient there) and sign the necessary insurance and other papers. No further comment was made by Mr. McCormick to me, but he went to Signal Supervisor Houser, who was standing nearby, and talked to him. Mr. Houser did not talk to me on the subject of going home or about continuing to work at straight time. Assistant Signal Supervisor Gillespie was not present, but Assistant Signal Supervisor Paul Pope was there. He was not with Mr. McCormick when I was asked about going home or staying on the job.

Later in the day, perhaps 5:00 or 5:30 PM, I asked the Leading Signal Maintainer to make arrangements to relieve me, but he said he could not because one truck was gone on a case of trouble to "FO" Cabin and the other truck was needed here. I was required to remain on duty until 10:30 PM."

Leading Signal Maintainer McCormick's Statement

"On September 27th 1970 Mr. Roy Hill Signal Maintainer Force 1617 Allen Ky., was called at 9:30 A.M. and relieved 8:30 P.M. to perform duties due to derailment #290 Train MP 118 Big Sandy Sub. Div.

Mr. Hill was asked to report back for duty at 11 P.M. on Sept. 27th, 1970 to perform duties in connection with derailment #290 Train MP 118 Big Sandy Sub. Div. on Sept. 28th 1970 after arriving at MP 118 approximately 9 AM I asked Mr. Hill if he wanted to go home.

Mr. Hill elected to stay on duty. About 5:30 P.M. he asked to be relieved. At the time he asked to be relieved we had one truck for transportation. To relieve Mr. Hill at time he requested another employee would had to come to headquarters at Allen Ky. and returned with the truck being approximately 80 miles round trip."

From the two above statements we are satisfied that the Claimant and Lead Maintainer McCormick are in agreement on the determinative fact. Both statements are to the effect that Claimant was offered the opportunity to go home or continue working. He continued working. Obviously, this constituted a release of Claimant from duty and an election by him to continue working. Thus, the situation falls squarely within the underlined portions of Rules 22 and 23 and we shall deny the claim.

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: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.