

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20337
Docket Number SG-20008

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

Carrier pay to Communications Maintainer G. W. Bennen (New Orleans) additional payment of eleven (11) hours and thirty(30) minutes at time and one-half his straight-time hourly rate (\$803.13 per month) account required to perform routine maintenance and construction work outside regular working hours on the following dates-- there was no emergency:

February 17, 1971-New Orleans- 3:00 P.M. to 7:00 P.M. - 4 hours
February 18, 1971-New Orleans- 3:00 P.M. to 5:00 P.M. - 2 hours
February 24, 1971-New Orleans- 3:00 P.M. to 8:30 P.M. - 5½ hours

[Carrier's File: B-315-39]

OPINION OF BOARD: Claimant, a Communications Maintainer, is a monthly rated employee covered by the controlling agreement. On the three claim dates, which were during Claimant's regular work week, he performed work continuous with but after his regular bulletin hours. There exists a conflict as to whether the work in question was "ordinary maintenance or construction work", was emergency work or could be characterized as non-routine work. We will not resolve this controversy as we do not find the issue to be significant in this case.

Petitioner's principal argument is Carrier's past practice; four instances of claims paid on the property in settlement of disputes involving overtime for monthly employees were cited. In each of the settlements cited the Carrier officer involved was the Superintendent of Signals and Communications. Petitioner also cites a letter from Carrier's Signal Engineer in 1956, in which he stated:

"I assure you that it is not this Company's intention that any work not necessary to maintain or restore proper operation of signal facilities be performed by signal maintainers during other than established working hours".

The Organization concludes that for years or emergency service could be required outside of assigned hours Monday through Friday without additional compensation.

While no specific rule violation is alleged in this case, Petitioner claimed that the Carrier "overextended the authority and intent" of Rule 48 (b) in failing to compensate Claimant at the overtime rate for the work involved herein. Rule 48 (b) provides:

"Rule 48

* * * * *

(b) 1. Signal Inspectors, Foremen, Leading Signalmen, employees assigned to the maintenance of a section or plant, and employees regularly assigned to perform road work shall be paid on a monthly basis at applicable rate set forth in Rule 47 which shall constitute the compensation for all service rendered except as hereinafter provided in this rule and in Rule 18. No time will be deducted unless the employee lays off of his own accord."

With respect to Petitioner's past practice argument the Board has held that payments by operating officers without the knowledge and final approval of the officer authorized to make and interpret the Agreement are not binding (Award 18064). In this dispute, the claim settlements cited were signed by the Superintendent of Signals and Communications who was not the officer signing the Agreement of December 19, 1968 which included Communications Maintainers under the rules of the basic Agreement nor was he the officer with responsibility to interpret the Agreement in Carrier's behalf. Even more persuasive is the clear and unambiguous language of Rule 48 (b) above. Under Paragraph 1 of the Rule the parties agreed that the monthly salary "...shall constitute the compensation for all service rendered except as hereinafter provided in this rule and in Rule 18". In this case Rule 18 is clearly not applicable and the provisions of paragraphs 4 and 5 of Rule 48(b) are not germane to this case. Under the final paragraph the intent of the parties is clarified further in providing for salary adjustments in the event that monthly paid employees are required to work excessive hours. It may be concluded unequivocally that Rule 48(b) provides that an employee, who is monthly rated, is not entitled to overtime compensation for work performed in excess of his bulletined hours during his regular five day work week.

We find no rule support for Petitioner's contentions or for the claim. In view of the clear language of Rule 48(b) the practices cited cannot prevail under long established Board doctrine. This Board is not empowered to rewrite the Rules; the Claim must be denied.

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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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: G.W. Farris
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.