

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20643
Docket Number SG-20375

Dana E. Eischen, 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, particularly Scope Rule 1, and Rules 7, 9, 17, 20, 32, 53, and 68, including past practice, when the two Leading Signalmen positions assigned to Barboursville Signal Shop was instructed, on or about last November 1, to forfeit forty (40) minutes overtime each day that had been assigned to these two positions for well over forty (40) years.

(b) As a result of such action, we now ask that Claimants F. E. Thompson, C&O ID #2065460, and I.D. Giesecke, C&O ID #2065464, be allowed the forty (40) minutes overtime at their applicable rate of pay for the violation cited in part (a) of this claim.

(c) Inasmuch as this is a continuing violation, said claim to be retroactive sixty (60) days from filing date (May 15, 1972) and to continue until such time as Carrier takes necessary corrective action to comply with the violation as cited in part (a) of this claim.
(Carrier's File: 1-SG-305)

OPINION OF BOARD: This case presents a dispute as to whether Carrier violated the controlling Agreement when it discontinued a practice of over forty years' standing whereby the occupants of two Leading Signalmen positions in the Barboursville Signal Shop were paid forty minutes overtime each day for signing time cards and recording work. The facts out of which the dispute arose are not contested.

The record establishes that for some forty years prior to claim date the Carrier paid the overtime described supra. Claimants herein were assigned to the Lead Signalmen positions in 1970 and received until November 1971, forty minutes overtime each work day for signing time cards and recording work. On or about November 1, 1971 Carrier ceased to pay the 40 minutes overtime and directed Claimants to perform the signing and recording during regular work hours 7:00 a.m. to 3:00 p.m. The instant claim alleging a violation of the Agreement and past practice subsequently was filed, handled on the property without settlement, and comes to us for resolution.

We have examined the record, the Agreement and each of the numerous awards cited by the respective parties. The Organization cites Awards 18548, 18267 and others for the sound doctrine that consistent, long standing and mutually accepted practice shows the intent of the parties when the Agreement is silent and/or not in conflict with the practice, particularly when the practice has not been abrogated by intervening negotiations. Carrier, on the other hand, relies on authority for the principle that past practice must yield to unambiguous Agreement language when there is conflict between the practice and the language. Awards 4501, 9193, 9419, 14599, 16807 and 18064. The case clearly turns on a determination as to whether the Agreement is silent or speaks in clear conflict as to the overtime practice involved herein.

It is undisputed that the practice was to allow 40 minutes overtime for the two positions here involved. But the Agreement at Rule 32 expressly provides as follows: "No overtime hours will be worked without authority of a superior officer except in cases of emergency where advance authority is not obtainable." We are persuaded that the clear language of the Agreement requires managerial approval for overtime except in cases of emergency and prohibits non-emergency overtime absent such approval. The record shows that this Agreement language dates from 1946 and clearly conflicts with the aforementioned practice. Under well established principles, unambiguous provisions of the Agreement generally must prevail over conflicting practice. This record does not indicate a waiver of Carrier's right to enforce the Agreement in this respect nor can we find herein support for an estoppel in pais. In light of all the foregoing we have no alternative but to deny the claims.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.