

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20720
Docket Number SG-20389

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

Claim No. 1

(a) Carrier violated Rules 1, 7, and 17 of the March 1, 1953 Agreement when it failed and/or refused to compensate Signal Foremen W. K. French, L. Gallagher, and J. J. Sykes (New York Division) for work performed on their rest day, Sunday, December 5, 1971.

(b) Each of the above Signal Foremen be paid account violations cited in claim (a), as follows:

W. K. French - 5----hours clearing signal trouble at County Road.
W. K. French 2-2/3 hours calling men to report for work at Mt. Prospect.
L. Gallagher 2-2/3 hours calling men to report for work at Oradel Ave.
J. J. Sykes 2-2/3 hours calling men to report for work at Signal B96
and B106.
J. J. Sykes 2-2/3 hours calling men to report for work at West End Intlg.
J. J. Sykes 2-2/3 hours calling men to report for work at Harrison.
J. J. Sykes 2-2/3 hours calling men to report for work at West End. Intlg.
(Carrier's File: 205-Sig.)

Claim No. 2

(a) Carrier violated Rules 1, 7 and 17 of the March 1, 1953 Agreement when it failed and/or refused to compensate Signal Foremen W. K. French and J. J. Sykes (New York Division) for work performed on their rest days--Sunday, December 19, 1971, January 16 and February 6, 1972.

(b) Each of the above Signal Foremen be paid account violations cited in claim (a), as follows:

12-19-71	W. K. French	2-2/3 hours calling men to report for work at DB Drawbridge.
1-16-72	J. J. Sykes	2-2/3 hours calling men to report for work at Roseville Ave. Tower.
1-16-72	J. J. Sykes	2-2/3 hours calling men to report for work at West End Tower.
1-16-72	J. J. Sykes	2-2/3 hours calling men to report for work at West End Tower.
2-6-72	J. J. Sykes	2-2/3 hours calling men to report for work at Paterson track circuit.

(Carrier's File 206 Sig.)

OPINION OF BOARD: On the claim dates in question each of the Claimant's herein, Messers. French, Gallagher and Sykes, were employed by Carrier as Foremen of Maintainers on the New York Division. Each of these employees received a monthly salary and was assigned one regular rest day per week, Sunday if possible. The instant claims arose because Claimants allege that they were on several occasions notified or called to perform work on their Sunday rest days but were not paid as required by the Agreement.

Provisions of the controlling Agreement upon which Claimants rely read in pertinent part as follows:

"Rule 1. An employe who is assigned to the duties of supervising a group of signal maintainers on a seniority district or subdivision thereof and who is not regularly required to perform any of the work over which he has supervision shall be classified as a foreman of maintainers. Foreman of Maintainers

NOTE: Foreman of maintainers may be required to perform with the assistance of a signaller or signal maintainer field tests of apparatus and equipment; however, the total time in making such tests shall not exceed 100 hours in a calendar year."

"Hours of Service Rule 7. (a) Foremen of maintainers, signal gang foremen and Meadville signal shop foremen will be paid monthly salaries to cover all services rendered without additional payment for overtime (except rest day) or nights or holidays.

* * * * *

"(c) Such employes shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employes of the same craft or class shall apply to service on such assigned rest day.

(d) Where employes now have a bulletined or assigned rest day, conditions now applicable to such bulletined or assigned rest day shall hereafter apply to the sixth day of the work week. Where employes do not now have a bulletined or assigned rest day, ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week.

* * * * *

"Rule 17. Employes released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40) minutes at the overtime rate; if held longer than two (2) hours and forty (40) minutes they will be paid at the overtime rate computed on the actual minute basis. The time of employes so notified will begin at the time required to report and end when released. The time of employes so called will start when they report and end at the time they return to designated point at home station."

Pay for
Calls

The facts out of which these claims arose are not in contention. On Sunday December 5, 1971, cited in Claim No. 1, Claimant W. K. French was called out and worked clearing signal trouble at County Road, New Jersey. On the same date, French and each of the other two Claimants were called by dispatchers out of the Hoboken dispatching office, notified that maintainers were needed, and requested to call out maintainers in their respective districts. The Claimants each, in turn, telephoned maintainers under their supervision and called them out to repair the signal trouble. Similarly, on each of the Sunday dates cited in Claim No. 2 each of the Claimants was notified of signal trouble by the Hoboken dispatchers and pursuant to request called out maintainers to clear the trouble. For each of the claim dates the Claimants submitted time sheets for the overtime rate on the basis of being required to perform work on their assigned rest days. Carrier refused payment, the claims were timely submitted and handled on the property without resolution, and the dispute comes to us for disposition.

Carrier asserts that Claimant French was paid the five hours' overtime for December 5, 1971 on payroll period June 1 through 6, 1972 and accordingly that his claim has no basis. In denying each of the other claims, Carrier on the property contended that the function of calling out men to cover trouble was not work as described in Rule 17 and cited Third Division Award No. 10975 as controlling in this case. We note that Carrier in its Ex Parte Submission to this Division argued several other points which close examination of the record reveals were never discussed on the property. Numerous awards buttress the principle that issues and reasons raised for the first time before our Board and not considered on the property, will not enter into our deliberations and decision. See eg, Awards 11986, 12388, 16061 et al.

As noted supra, Carrier asserts the affirmative defense of payment regarding the claim of W. K. French for five hours overtime for clearing signal trouble at County Road. Detailed perusal of the record shows no denial of Carrier's assertion nor any positive statement by Petitioner or Claimant that payment was not made. Rather, Petitioner merely points to a lack of documentation of the payment. In these circumstances, Petitioner has failed to carry its burden of persuasion and proof and the claim for five hours must be dismissed.

Carrier's reliance on Award 10975 in denying each of the remaining claims is misplaced. As we read that Award it is, to the extent relevant and material, supportive more of Claimants' than of Carrier's position herein. In construing another Agreement, we denied the claim in Award 10975 precisely because the calling out of crews was "work" of a supervisor. Petitioner on behalf of Claimants concedes that it is part of the regular work of foremen to call out employees during the work week but that when such work is required on the foreman's rest day it should be compensated at the punitive rate under Rules 7 and 17. Carrier, on the other hand, seems to argue that such duties are inherent in the supervisory position and are "work" for which the foreman is paid a monthly salary covering work days, but that the same functions when performed on the assigned rest day are not "work" for pay purposes. Such logic is not persuasive nor is such a result indicated by the Agreement or prior awards of our Board. Accordingly, we must find that under the Agreement provisions quoted supra, these foremen are entitled to compensation at the overtime rate for two hours and forty minutes, unless more time is spent and then on an actual minute basis, for the time spent calling out men at the direction of Carrier on the foreman's regularly assigned rest day.

Claimant J. J. Cykes has demanded a minimum allowance of two hours and forty minutes for each of several outgoing calls made by him apparently pursuant to a single incoming call from the dispatcher on the several claim dates. Neither the record herein nor the Agreement support such a compounding of claims. Rule 17 contemplates payment of the minimum

allowance for time worked up to two hours and forty minutes and on an actual minute basis for time worked over that amount. The burden is on Claimant to demonstrate time worked over two hours and forty minutes on the rest day. On the instant record there is no question that Claimants performed some work in calling out men on the Sunday rest days December 5 and 19, 1971 and January 16 and February 6, 1972. There is no evidence to indicate the amount of time spent, however, and accordingly the claims may be sustained only to the extent of a two hour and forty minutes minimum allowance for each Claimant on each claim date.

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 violated to the extent indicated in the Opinion.

A W A R D

Claim No. 1

- a) Claim sustained as indicated in Opinion.
- b) Claim of W. K. French for 5 hours at overtime rate on December 5, 1971: Claim dismissed.
Claim of W. K. French for 2-2/3 hours at overtime rate on December 5, 1971: Claim sustained.
Claim of L. Gallagher for 2-2/3 hours at overtime rate on December 5, 1971: Claim sustained.
Claim of J. J. Sykes for 2-2/3 hours times 4 at overtime rate on December 5, 1971: Claim sustained to the extent of 2-2/3 hours at overtime rate.

Claim No. 2

- a) Claim sustained as indicated in Opinion.
- b) Claim of W. K. French for 2-2/3 hours at overtime rate on December 19, 1971: Claim sustained.

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Claims of J. J. Sykes for 2-2/3 hours times 3 at overtime rate on January 16, 1972: Claim sustained to the extent of 2-2/3 hours at overtime rate.

Claim of J. J. Sykes for 2-2/3 hours at overtime rate on February 6, 1972: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.