

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20759

Docket Number SG-20427

Robert A. Franden, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Chicago, Rock Island and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

Carrier pay to Signal Maintainer R. W. Hafley additional time equal to 5-9/12 hours' overtime for service which he performed on May 4, 1972, in connection with Carrier's scheduled construction and maintenance program. (Carrier's File: L-130-501; General Chairman's File: AV-H-126)

OPINION OF BOARD: In connection with the renovation of a crossing in East Moline, Illinois Claimant Signal Maintainer worked 5 9/12 hours past his regular quitting time in order to complete the necessary signal work. It is the Claimant's position that this is compensable overtime. The Carrier takes the position that overtime necessary to complete work commenced during regular hours is not compensable under Rule 62.

"RULE 62. MONTHLY RATED SIGNAL MAINTAINERS: Employees assigned to the maintenance of a territory or plant will be paid on a monthly basis; except maintainers where more than one shift is assigned on a maintenance territory, maintainers assigned to a maintenance territory within the limits of an interlocker, and maintainers assigned to a maintenance territory of not to exceed 10 miles; such positions may be either monthly or hourly rated.

Such employee shall be paid not less than the minimum monthly basic hourly rate as shown in Rule 61, established for the corresponding class of employees coming under the provisions of this agreement, which shall be determined by dividing the monthly rate by two hundred eleven and two-thirds (211-2/3) hours. Employees will be paid actual necessary expenses when away from headquarters.

No overtime is allowed for time worked in excess of eight (8) hours per day on the regularly assigned five (5) days per week the employee is scheduled to work, nor on the first scheduled rest day (6th day) of the work week or holidays; on the other hand, no time is to be deducted unless the employee lays off on his own accord.

On the regularly assigned five (5) days per week the employee is scheduled to work, ordinary Maintenance and Construction work will not be required outside of their bulletined assigned hours. This does not apply to such travel time or work a Maintainer might run into when in completing a certain job worked on, during the day he might leave his headquarters or return thereto outside his regular assigned hours.

Monthly rated employees will have Sunday as assigned rest day, if possible. For service performed on assigned rest day, rules applicable to other employees of the same class shall apply as provided in Rules 17 and 18.

Such monthly rated employees will not be required to perform ordinary maintenance or construction on the sixth day of the work week nor on recognized holidays. For such service rules applicable to other employees of the same class shall apply as provided in Rules 17 and 18. Only emergency service may be required on such sixth day, which will be the service necessary to restore the signal system to safe working order.

Employees covered by this rule who are required by the Carrier to perform work outside the limits of their territory outside the assigned hours of their work week will be compensated for such service under the rules applicable to other employees of the same class as provided in Rules 17 and 18. However, this paragraph shall not apply to Foremen working under Rule 81(d)."

The position of the Claimant is that the work performed was ordinary maintenance and construction work as contemplated in the first sentence of the fourth paragraph of the Rule. The Carrier contends that the work falls into the category of work "run into" as contemplated by the second sentence of the fourth paragraph of Rule 62.

The Carrier has cited two Awards dealing with the same parties and the same rule. Both of those Awards (20208 and 20610 which cites 20208 with approval) found that the work in question was not ordinary maintenance and construction work but work run into which was not compensable as overtime.

Award 20208 deals with a situation where the work in question would have been completed during regular hours had the switch machine which was installed operated properly. As a result of it not working properly the work in question had to be performed after regular hours. We believe this case points out an essential element of work "run into". That is, there must be a certain unexpectedness to the necessity of having to have the work performed after regular hours.

In Award 20208 we said "We are mindful that the nature of the fourth paragraph of Rule 62 is such that it could possibly be misused by the Carrier. We are also mindful that, in this case, a lengthy period was required to perform the work "run into" in completing a certain job. For these reasons we have studied the facts closely. We note though, that the Employees did not dispute that the work would have been completed within regular hours if all had gone well. Nor did the Employees contend that the Carrier could have foreseen the malfunctioning of the switch machine, that the Carrier had any knowledge about the machine's defects which would have relieved Claimant of the duty to complete the job, or that the job could have gone over until the next day." (emphasis supplied)

Ordinary maintenance and construction that was begun during regular hours and then continued afterwards does not in and of itself determine that the work performed after regular hours was "run into". The wording of the rule is "This does not apply to.....work a Maintainer might run into when completing a certain job worked on....." The words "might run into" suggest a happenstance rather than the performance of work which is part of regularly scheduled maintenance or construction. The happenstance may be either in the nature of the work performed or the time during which it is performed as was the case in Award 20208. The construction suggested by the Carrier would permit the Carrier to commence maintenance or construction work toward the end of a shift and work the employees after regular hours to complete the project without becoming liable for overtime.

In the instant matter there is nothing to suggest that the work in question was not easily foreseeable both in its nature and time necessary performance. It was ordinary maintenance or construction work as contemplated by paragraph 4 of Rule 62 which Carrier should not have required to be performed outside of bulletined assigned hours.

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

Award Number 20759
Docket Number SG-20427

Page 4

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.