

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20990
Docket Number SG-21122

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

Claim No. 1:

(a) Carrier violates the current Signalmen's Agreement as amended, particularly Rule 19(d) when it declines to pay Signal Maintainer S. S. Stone for one hour at his pro rata rate of pay as preparatory time.

(b) Carrier should now be required to compensate Signal Maintainer S. S. Stone for one hour's pay at the pro rata rate of pay for each of the following days: November 3, 20, 22, 30, December 1 and 16, 1973. [Carrier's file: 15-19(74-1) E3]

Claim No. 2:

(a) Carrier violates the current Signalmen's Agreement, as amended, particularly Rule 19(d), when it declines to pay Signal Maintainer L. H. Hightower for one hour at his pro rata rate of pay as preparatory time.

(b) Carrier should now be required to compensate Signal Maintainer L. I. Hightower for one hour's pay at the pro rata rate of pay for November 1, 1973. [Carrier's file: 15-19(74-2) E3]

OPINION OF BOARD: The operative facts in both claims are the same. Each of the Claimant Signal Maintainers was required to work off his assigned signal maintenance territory outside of his regular work period; in connection therewith, each claimed one hour's pro rata pay as preparation time under Rule 19(d) of the Signalmen's Agreement, effective July 1, 1967. The Carrier denied the claims, asserting that such claims were not supported by Rule 19(d) or other rules.

The pertinent rules now follow.

"RULE 18 -- Hourly Rated Employees Leaving Home
Station and Returning Same Day

"Hourly rated employees performing service requiring them to leave and return to home station the same day, shall be paid continuous time, exclusive of the noon meal period, from time reporting for duty until released at home station, whether working, waiting, or traveling, straight time for all straight time work, overtime for all overtime work and straight time for all time traveling or waiting on trains or buses, except that on assigned rest days and the seven designated holidays, all time working, waiting or traveling shall be at the overtime rates."

"RULE 19 -- Hourly Rated Employees Leaving Home
Station and Not Returning Same Day

"Hourly rated employees performing service which requires them to leave their home station and who do not return to home station the same day, will be compensated as follows:

(a) All hours worked will be paid for -- straight time for straight time hours and overtime rate for overtime hours.

* * *

(d) When employees are notified or called to leave their home station under this or the preceding rule, before or after their regular work period, they will be allowed one hour at pro rata rate as preparation time, except this shall not apply to maintainers called to work on their assigned territory. (Emphasis added)

The Carrier's Submission states that Rule 19 of the parties' Agreement was Rule 18(a) of the former Atlantic Coast Line Agreement and that such Rule 18(a) became part of the parties' Agreement through the Employees' right to "cherry pick" the rules of the agreements with the former Atlantic Coast Line Railroad Company and the former Seaboard Air Line Railroad Company when those two carriers merged to form the Seaboard Coast Line Railroad on July 1, 1967. The Carrier argues that the intent of Rule 18(a) of the former Atlantic Coast Line Agreement, as well as the intent of instant Rule 19(d), was to pay one hour pro rata for preparation time for employees who did not return to their home station in the same day. Since the herein Claimants returned home in the same day, the Carrier contends that instant Rule 19(d) is inapplicable. The Carrier also asserts that, in searching its records for similar claims filed under either of

the former railroads' Signalmen's agreements or the current SCL agreement, it has found only one similar claim and that such claim was not appealed following its denial in December 1973. And finally, because the text of Rule 19(d) has been in effect since April 1, 1946 without any claims of this type having been progressed thereunder, the Carrier contends that this history evidences the parties' intent on what the rule means and also evidences a custom and practice which is now binding.

Examination of the pertinent rules demonstrates that Rule 18 is written to cover employes leaving and returning to home station in the same day, while, in contrast, Rule 19 is written to cover employes leaving home station and not returning in the same day. However, this does not serve to validate the Carrier's contention about the intent of the rules because the underlined text of Rule 19(d) clearly renders paragraph (d) of Rule 19 applicable to "the preceding rule"; this unmistakably refers to Rule 18 and the effect is that such rule requires pay for preparation time even though such rule has as its main subject employes who leave home station and return each day. In short, Rules 18 and 19, when read in conjunction with one another, provide that preparation time will be paid for on the basis of an employe being required to work off his assigned territory outside of his regular work period and it is irrelevant whether he returns to his home station or not. The requirements of Rule 19(d) are clear and unambiguous and thus the Carrier's allegation concerning past practice is no defense. It is so well settled as to require no citation of authority that a clear, unambiguous rule can be asserted at any time and that prior silence concerning rights under the rule will not defeat a meritorious claim. The claims will be sustained.

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 violated.

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Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.