

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21182
Docket Number SG-21107

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:

On behalf of Signal Foreman R. W. Boyd and Signalmen D. O. Jones and P. R. Sumpter for an additional payment of eight (8) hours each at time and one-half their respective straight time hourly rate, account required to suspend all work on Texas and Pacific property to perform communications pole line work off property, on Missouri Pacific property - work covered by another Craft, at M. P. 159 near Waco, Texas, on November 8, 1973, in violation of the entire Texas and Pacific Signalmen's Agreement.

[General Chairman file: 141. Carrier file: G 315-83]

OPINION OF BOARD: On November 8, 1973 Claimants, members of Carrier's Signal Gang #1681, were required to go to the property of the Missouri Pacific Railroad near Waco, Texas for the purpose of re-locating three poles of a communications line. The work was accomplished in the course of their regularly assigned work hours. It is noted that Carrier is a wholly owned subsidiary of the Missouri Pacific Railroad.

Petitioner asserts that Carrier violated the Agreement, particularly Rules 12 and 62, when it required the Claimants to suspend their work on their seniority territory during regular working hours in order to perform work on another railroad. In addition, the Organization maintains that the parties have established, by past practice, that the rate for such work would be an additional time and one-half during regular working hours. The cited rules provide:

"Rule 12. Employees will not be required to suspend work during regular working hours to absorb overtime."

* * * *

"Rule 62. Except in extreme emergencies, employees covered by this agreement will not be required to perform work of any other craft nor will employees of any other craft be required to perform work coming within the scope of this agreement."

Carrier argues that there has been no violation of Rule 12 in that there is no evidence that overtime was absorbed. Further, with respect to Rule 62, Carrier asserts that the claim with regard to the work being off their assigned territories does not demonstrate that Claimants performed the work of another craft. In fact, Carrier argues that the work in question was no different than the work performed by Claimants on other days of their work week. Carrier also maintains that prior payments made by the Superintendent of Signals were erroneous and do not in any event constitute a practice since that official had no authority to change or interpret agreements.

It is evident that the provisions of Rule 12 relating to the Absorbing of Overtime have no bearing on this dispute. Furthermore, Rule 62 does not by its clear terms prohibit the performance of scope work off of assigned territories. As the General Chairman admitted during the handling on the property, the parties have no rule covering work off-property. The past practice argument falls, based on well established principles; we have held consistently that payments by operating officers without the knowledge or final approval of the officer authorized to make and interpret the Agreement are not binding (see Awards 18064 and 20337 among others). In any event it would have been necessary for Petitioner to establish the existence of a system-wide practice, which was not done.

We must conclude that Petitioner has not demonstrated a violation of any Agreement Rules in this dispute and there is no probative evidence of a controlling practice. Since it is axiomatic that this Board is without authority to write or expand rules, the Claim must be denied.

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. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1976.