NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21247
THIRD DIVISION Docket Number SG-21277

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

(A) Employes of the Harmon Electronics Co. performed installation and testing of CTC Signal equipment in violation of the current Scope Rule of the May 1, 1964 Signalmen's Agreement. This violation began about November 3, 1973 and still existed February 14, 1974. Signal employes were denied work experience and overtime compensation. Three and four Harmon employes worked in excess of 40 hours per week. Signal employes were not allowed to work on an equal basis, and seniority did not prevail.

(B) Senior Signal Technician H. R. Kelly was not allowed any overtime work. D. L. Gilmore, a junior Signal Technician, worked overtime as follows: Dec. 1, 1973 - (8) hours, Dec. 2, (10 1/2) hours, Dec. 8, (8) hours, Dec. 9, (10) hours, Jan. 5, 1974 (7 1/2) hours, Jan. 6, (17) hours. It appears in this part of the Claim that Rules 307 and 600 (B) of the current Signalmen's Agreement have been violated, and we request that Mr. Kelly be paid (61) hours at the time and one-half rate of pay.

(C) Employes assigned to Signal Gang #1342 headquartered at North Little Rock, Ark., were denied overtime work in violation of current Rule 307 of the Signalmen's Agreement. No member of the Signal Gang was allowed to work January 6, 1974, when some Harmon Employes, a Carrier Signal Technician, and a Signal Maintainer worked 17 hours. We request that you direct payment to Gang Signalmen L. D. Smith, G. D. Palmer, and S. L. Wilkerson for (17) hours at the time and one-half rate of pay.

(D) It was decided by Signal Department Officials that Signal Maintainer R. H. Bryant would maintain the CTC equipment in the new building at 1000 W. 4th St. The new building is outside the territory assigned to Mr. Bryant. Until changed by written notice, Mr. Bryant's territory is as assigned by Signal Bulletin Number 4, 1972. Mr. Bryant is entitled to Class Eleven (11) time for all time he works in the building, as per Rule 66 (D) of current Agreement dated July 15, 1970. It is further noted that Mr. Bryant worked (17) hours overtime on January 6, 1974, in lieu of E. J. Anousakes, a senior Signal Maintainer. The BRS requests that you direct payment to Mr. Anousakes for (17) hours at the time and one-half rate of pay as current Rules 307 and 600 (B) of the May 1, 1964 Agreement have been violated.

/Carrier's file: G 225-645/

OPINION OF BOARD: The four claims herein arose out of the installation of new consoles and equipment for the Centralized Traffic Control (CTC) in a new one-story office building on the north side of the Arkansas River in North Little Rock. The old Union Depot, located on the north side of the Arkansas River, had been sold following the discontinuation of passenger service. The work of installing the new CTC equipment began on June 7, 1973, and was finished on February 28, 1974. The equipment was purchased from Harmon Electronics under a purchase contract that provided that Harman personnel would supervise the installation and guarantee the proper functioning of the equipment. The carrier's Signal Gang No. 1342 was assigned the work of installing the new equipment subject to supervision by Harmon personnel and supervisors in the carrier's Signal Department.

The first claim is premised upon allegations that Harmon employes performed installation and testing of CTC equipment in violation of the Scope Rule of the agreement between the parties during the period November 3, 1973, to February 14, 1974. Harmon employes supervised and even participated in the testing of the signal equipment to insure that the equipment was operating in accordance with specifications. It is denied that Harmon employes "performed installation".

The record does not support a finding that Harmon Electronics employes performed work other than what was necessary to carry out its "obligation under the purchase contract" that Harmon Electronics would supervise the installation and guarantee the proper functioning of the equipment. The record indicates that the actual testing of the equipment and responsibility for its proper functioning is assigned to electronic technicians in the Carrier's Signal Department, and that two electronic technicians employed at Little Rock worked with the Harmon personnel in testing the equipment as it was being installed and made the final acceptance tests upon completion of the work. Beyond this, the organization failed to meet its burden of proof that work of installation and testing of CTC Signal equipment was performed by other than employes within the scope of the Agreement applicable here. See Third Division Award No. 17216 (Referee H. Brown).

The next claim relates to Senior Signal Technician Kelly's assertions that he was denied overtime during the period December, 1973, and January, 1974, while a junior Signal Technician, D. L. Gilmore worked the overtime of 61 hours. The records indicate Kelly did work 10 hours overtime during this period. All agree that the senior man is entitled to the overtime unless he waives that right. Here the difficulty occurs because there is proof that Kelly relinquished this right to overtime in favor of Gilmore and there is also evidence that Kelly signed a statement to the effect he did not relinquish such overtime. This conflict cannot be resolved by this Board and this portion of the claim must be dismissed for failure of proof.

The third claim relates to the alleged denial of overtime work to the Signal Gang #1342 on Sunday, January 6, 1974, when some Harmon employes and a Carrier Signal Technician and a Signal Maintainer worked 17 hours. This claim asserts that work performed by Harmon people should have been performed by the gang. The problem here is that the work is not identified and there is no proof that the Harmon people and the technicians were doing work of the gang on that Sunday. There is evidence, however, that the Harmon employes and the technicians were carrying out testing and technician work on that date in a manner which was not in violation of the Scope Rule here. It follows that this portion of the claim is defective in that the Brotherhood failed to prove a violation of Rule 307 of the Signalmen's Agreement.

Lastly, a claim of 17 hours overtime is asserted on behalf of Signal Maintainer Anousakes on the basis that Signal Maintainer Bryant maintained CTC equipment located in North Little Rock on January 6, 1974. The territories of the two are contiguous, divided by the Arkansas River with Anousakes north of the river and Bryant south. This difficulty arose when the CTC machine was moved to North Little Rock on the north side of the river. The record is clear that responsibility for the CTC machine in both territories has customarily been stated separately. It is claimed the machines are not considered a part of the geographical territory described in the assignment bulletins covering track side signal equipment. Here Mr. Bryant continued to be responsible for the CTC machine when it was moved. Claimant failed to prove the CTC machine was not within Bryant's assignment and there could not be an award of overtime to Anousakes for work properly assigned another.

We conclude there is no validity to any part of this claim, for the reasons stated, and the portions thereof must be dismissed.

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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1976.