

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21858  
Docket Number SG-21772

James F. Searce, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railroad Signalmen  
(  
(Southern Pacific Transportation Company  
( (Pacific Lines)

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

Claim No. 1: Carrier's file: SIG 152-350

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the current Memorandum of Agreement between the Southern Pacific Transportation Company (former Pacific Electric Railway Company) and its employees represented by the Brotherhood of Railroad Signalmen, dated May 6, 1970 particularly paragraphs 3 and 4.

(b) Mr. G. Bozaan be allowed five and one half hours at the time and one half rate for January 3, 1975.

Claim No. 2: Carrier's file: SIG 152-351

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the current Memorandum of Agreement between the Southern Pacific Transportation Company (former Pacific Electric Railway Company) and its employees represented by the Brotherhood of Railroad Signalmen, dated May 6, 1970, particularly paragraphs 3 and 4.

(b) Mr. G. Bozaan be allowed six and one half hours at the time and one half rate for January 7, 1975.

Claim No. 3: Carrier's file: SIG 152-352

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the current Memorandum of Agreement between the Southern Pacific Transportation Company (former Pacific Electric Railway Company) and its employees represented by the Brotherhood of Railroad Signalmen, dated May 6, 1970, particularly paragraphs 3 and 4.

(b) Mr. J. Olech be allowed four hours at the time and one half rate for January 8, 1975, and also five hours at the time and one half rate for January 14, 1975.

OPINION OF BOARD: Carrier maintains four Bonder and Welder crews, one for each district on the former Pacific Electric Railroad Property. On the dates of January 3, 7, 8 and 14, 1975, a regular occupant of a Bonder and Welder crew was absent due to jury duty and there was no one available holding seniority in the Bonder and Welder classification to fill this temporary vacancy. Accordingly, in following a long established practice, Carrier used a Signalman, Mr. Meaders, who was regularly assigned to Signal Gang #3 to fill these vacancies. There is no dispute concerning Carrier's temporary assignment of Mr. Meaders to these assignments. The dispute centers on Mr. Meaders performing overtime work along with other members of the Bonder and Welder crew which was continuous with the regularly assigned hours of the crew. Claimants herein, members of bonder and welder gangs from adjacent districts, contend that they should have been called to perform the overtime work here in question.

In case after case decided by this Board, we have repeatedly ruled that in order to establish a right to relief sought in the statement of claim, the Petitioner must firstly cite provisions of the agreement which prohibited Carrier from acting in the manner which Petitioner challenges and secondly, the Petitioner must show how Carrier's action violated the cited provisions of the contract. Unless there exists a contractual prohibition precluding Carrier from taking the action disputed, we have no authority under the Railway Labor Act to find for Petitioner.

In applying these principles to the facts of the instant case, we can find no provision of the controlling agreement between the parties which prohibited the action here in dispute.) In fact, Signalman Meaders' performance of overtime with the bonder and welder crew on the claim dates was in accordance with provisions of the May 6, 1970 Memorandum of Agreement between the parties, which provides in relevant part:

"If work on a particular job during regular assigned hours extends into overtime, crew in whose District work is being performed will remain on overtime."

Under the peculiar facts and circumstances of this case, we can see no violation of the controlling agreement and the claim 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 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.