

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21913
Docket Number SG-21694

Irwin M. Lieberman, 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:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated and/or misapplied the Agreement between the Company and its Employees in the Signal Department, represented by the Brotherhood of Railroad Signalmen effective October 1, 1973 and particularly Rules, 13, 16, 17, 23, and Appendix 'H' which resulted in violation of Rule 72.

(b) Leading Signaller George R. Cornish, Signal Gang No. 6, Oakridge, be allowed additional compensation for eight (8) hours at his straight time rate for loss of double time rate on February 28, 1975.

[Carrier file: SIG 61-51]

Claim No. 2:

(a) The Southern Pacific Transportation Company (Pacific Lines), violated and/or misapplied the Agreement between the Company and its employees in the signal department represented by the Brotherhood of Railroad Signalmen, effective October 1, 1973, and particularly rules 11(a), 11(b), 16 and 17, which resulted in violation of Rule 72.

(b) Signal Maintainer D. R. Wise, Sacramento Draw Bridge, Sacramento, California, be allowed eight hours additional straight time pay which he was deprived of when he was sent home and not permitted to work his regular assigned eight (8) hour work period on March 26, 1975, to avoid additional double time payment after working twenty-two and one-half hours continuous time.

[Carrier file: SIG 61-52]

OPINION OF BOARD: This dispute, involving two claims, deals with the allegation by Petitioner that Claimants were improperly deprived of double-time pay under certain circumstances.

In Claim No. 1, Claimant Cornish had regularly assigned hours of 7:30 A.M. to 4:30 P.M. Monday through Friday. On the relevant dates Claimant worked on February 27, 1975 from 7:30 A.M. to Midnight and on February 28, from Midnight to 1:30 A.M. when he was released from duty and instructed to report for duty on his regular assignment at 9:30 A.M. "....to avoid payment of punitive rate for his regularly assigned hours, pursuant to the specific provision of Rule 16...." For this service he was paid eight (8) hours straight time for the first eight (8) hours work, eight (8) hours at time and one-half for the next eight (8) hours and double time for the period on February 28 from Midnight to 1:30 A.M. He also received straight time for the eight (8) hours of his regular assignment on February 28th in spite of reporting two hours late as instructed.

In Claim No. 2, Claimant Wise with regularly assigned hours of 7:30 A.M. to 4:30 P.M. Monday through Friday had a closely related circumstance. On March 25, 1975 he worked from 7:30 A.M. to Midnight and on March 26th from Midnight to 6:30 A.M. at which point he was instructed not to report for his regular assignment on that day, also to avoid payment of the punitive rate. Mr. Wise received straight time for the first eight (8) hours, time and one-half for the next eight (8) hours and double time for the next six and one-half (6 1/2) hours. For his regular shift on March 26th, which he did not work, he received straight time pay.

Pertinent portions of the following rules are applicable to this dispute:

"RULE 13. Shifts.

* * * *

The starting time of employees shall not be changed without first giving the employees affected thirty-six (36) hours' notice. Starting times shall not be temporarily changed for the purpose of avoiding overtime."

"RULE 16. Overtime.

* * * * *

Time worked after sixteen (16) hours of continuous service shall be computed on the actual minute basis and paid for at the double time rate until employee is released for eight (8) consecutive hours time off duty. For purposes of computing sixteen (16) hours of continuous service, as referred to herein, actual time worked shall be counted from time on duty until relieved for eight (8) consecutive hours time off duty.

It is understood that nothing in this rule requires that the Carrier retain an employee on duty at punitive rate of pay."

"RULE 17. Absorbing Overtime.

Employees shall not be required to suspend work during the regular hours for the purpose of absorbing overtime."

"RULE 23. Established Hours and Days.

The regularly established daily working hours shall not be reduced below eight (8) per day, nor shall the regularly established number of working days be reduced below five (5) per week, except in weeks in which positions are established or abolished, unless agreed to in writing by a majority of the employees affected through their General Chairman, except that said number of days may be reduced in a week in which holidays (those specified in Rule 15) occur, by the number of such holidays."

"RULE 72. Loss of Earnings.

An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

The sole question in this dispute is whether Carrier has the right to instruct employes to go off duty during regular working hours in order to avoid paying double time. There is no question but that this was the purpose of sending the two Claimants herein home after their extended overtime service.

Petitioner's major arguments may be summarized as follows:

1. In Claim No. 1 Mr. Cornish's starting time was changed by Carrier to avoid overtime payment in direct contravention of Rule 13.
2. The application of Rule 16 in its provision that nothing in that rule requires Carrier to retain an employe on duty at the punitive rate, must be viewed in the context of the entire agreement, particularly Rules 17 and 23.
3. In both Claims Carrier admitted that Claimants would have been entitled to punitive pay under Rule 16 had they been brought back to duty at their regular starting times. The actions of Carrier were directly contrary to the provisions of Rule 17.
4. Under Rule 23, the regularly established working hours are not to be reduced below eight; in both of these claims Claimants were not allowed to work their full eight (8) hours regular work day.
5. Rule 72 covers the Claimants' loss of earnings due to Carrier's misapplication of the Agreement.

Carrier's arguments are based largely on the premise that there is nothing in the Agreement which requires Carrier to work the employes on their regular assignments under the circumstances of this dispute. Carrier's position is based on the specific language of Rule 16 which expressly recognizes that Carrier is not required to retain an employe on duty at the punitive rate of pay. Carrier also points out that Rule 16 is a specific rule which takes precedence over other general rules in the Agreement. Carrier also cites Award 16739 involving the same Carrier and the Brotherhood of Maintenance of Way Employees in a closely related dispute and similar contractual provisions. In that dispute Carrier notes that the Petitioner merely requested pro rata compensation as recoverable in parallel circumstances.

Initially, we do not view there to be a conflict between the provisions of Rule 16 and any other rule cited. As this Board held in Award 16739 there is no reason to conclude that the provisions of Rule 16 nullify the injunctions of Rule 17. Additionally, it is noted that Rule 16 is not "more specific" than Rules 13, 17 or 23.

While we do not view most rights in agreements to be "absolute" it is noted that Carrier's argument with respect to its right to refrain from retaining an employe on duty at the punitive rate, is clearly not an absolute right either. The Board stated, interestingly, in Award 16060:

"This Board, in its interpretation of similar rules negotiated with other Carriers by this same Organization, has held absolute the prohibition that 'employees will not be required to suspend work during regular hours.'...."

The facts in this dispute, consistent with those in Award 16739, indicate that on the dates herein, Claimants' regularly assigned hours were from 7:30 A.M. to 4:00 P.M. and had not Carrier instructed them otherwise, they would have worked on overtime during those hours. There is no indication in Award 16739 as to why the Petitioner did not request a punitive rate nor was there any finding on that issue. In this dispute we find that Carrier admittedly required Claimants to suspend work during their regularly assigned hours for the purpose of absorbing overtime in violation of Rule 17. Accordingly, the Claim must be sustained, in conformity with Rule 72.

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 violated.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.