

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22030
Docket Number SG-21991

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:

Carrier file: SIG 148-254

(a) the Southern Pacific Transportation Company (Pacific Lines) has violated 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), 13, 16, 17, 23 and 43 which resulted in violation of Rule 72.

(b) Mr. L. H. Carmichael be compensated for seven (7) hours at the straight time rate of his position for September 10, 1975, the amount he was deprived of when required to suspend work during his regular assignment to avoid payment of double time for his regular assignment, clearly for the purpose of absorbing overtime.

Claim No. 2:

Carrier file: SIG-145-182

(a) the Southern Pacific Transportation Company (Pacific Lines) violated the agreement between the Carrier and its employees in the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective October 1, 1973 and particularly Rule 29 which resulted in violation of Rule 72.

(b) Mr. A. L. McCullough be paid the difference between Signalman's rate of pay and that of General CTC Maintenance Technician for seven (7) hours for September 10, 1975.

OPINION OF BOARD: With respect to Claim No. 1 there is no dispute as to the facts, or indeed the issue. Carrier has stated in its submission: "It is clear, however, that Rule 16 specifically grants Carrier the right not to retain Claimant Carmichael on duty at punitive rate of pay, and in this instance Carrier exercised that right in order to avoid payment at the punitive rate for regularly assigned hours in this instance". An identical issue was before this Board in Award 21913, involving the same parties. In that Award we held that, in closely identical circumstances, Carrier did not have the right to require Claimants to suspend work during regularly assigned hours for the purpose of absorbing overtime. We found that such action was in violation of Rule 17. In the instant dispute we must affirm the reasoning expressed in Award 21913 and consequently Claim No. 1 must be sustained.

Claim No. 2 deals with the allegation that Claimant in that case was required to fill a higher rated position for a seven hour period, the period in which Claimant in Claim No. 1 was sent home. An examination of the record of this Claim reveals no evidence in support of the contention that he was required to perform the work of the higher rated position on the date in question. This lack of proof coupled with Carrier's recognized right to blank a position compels the conclusion that the Claim is lacking in merit. It is also noted that Claimant in this dispute filed an identical claim in 1968 which the Board denied for the same reasons in Award 18535.

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 with respect to Claim No. 1 and was not violated in Claim No. 2.

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A W A R D

Claim No. 1 is sustained.

Claim No. 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

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