NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22735
Docket Number SG-22188

THIRD DIVISION

Rolf Valtin, 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:

On behalf of Signal Maintainer S. L. Wilkerson for 3.6 hours at the overtime rate, which was deducted from his pay on the first period of April 1976 pay-roll (initially paid for work performed March 4, 1976)."

/Carrier file: 225-709/

OPINION OF BOARD: The claimant is a monthly-rated Signal Maintainer at Poplar Bluff, Missouri (about 200 miles south of St. Louis). The 3.6 hours claimed by him were incurred within the period from about 9 PM on March 4, 1976 to about 1 AM on March 5, 1976. These days were, respectively, Thursday and Friday and the claimant's fourth and fifth workdays.

On the evening of the Thursday, the Carrier experienced signal difficulties in its CTC system. The claimant was called out for diagnostic and correcting purposes. He rather quickly (within about a half-hour) determined that the Bell Telephone Company circuits were the source of the difficulties.

On being so notified, the Bell Telephone Company discovered that one of its cables had been struck by lightning (in the St. Louis area). Bell made the repairs. The claimant did not work on its equipment.

During the course of the repair process, however, the claimant remained on duty. He made some telephone calls checking on Bell's repair efforts, but he was essentially standing-by. His function was to await word from Bell that the repairs had been successfully completed and thereupon to check the Carrier equipment in ascertainment of a properly restored CTC system. He fulfilled this function and went home at the already-given time.

The claimant's mode of remuneration is governed by Rule 600. The concluding portion of paragraph (b) and paragraph (c) in its entirety read as follows:

"(b) . . . . . .

Employes paid on basis of a monthly rate will be assigned one regular rest day per week, Sunday if possible, which is understood to extend from midnight to midnight. Rules applicable to hourly rated employes will apply to service on such assigned rest day, and to ordinary maintenance or construction work on the sixth day of the work week. The straight-time hourly rate for such employes will be determined by dividing the monthly rate by 211. Future wage adjustments, so long as monthly rates remain in effect, shall be made on the basis of 211 hours per month.

"(c) Except as provided in paragraph (d) of this rule, the monthly rate provided for herein shall be for all work subject to the Scope of this Agreement performed on the position to which assigned during the first five (5) days of the work week and shall include other than ordinary maintenance and construction work on the sixth day of the work week. If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salaries of these positions may be taken up for adjustment."*

It is concededly true: 1) that the monthly rate for Signal Maintainers (and others) is set at a level which contemplates the performance of some work, without extra compensation, which by normal workweek standards would be overtime work -- it contemplates the working of 211 hours per month; 2) that the claimant is not entitled to the pay he is claiming if, in the period for which the claim is made, he was engaged in "work subject to the Scope of this Agreement"; 3) that the claimant was not in the "excessive hours" situation dealt with in the last sentence of paragraph (c).

The Organization contends that the claimant was given a duty which did not represent "work subject to the Scope of this Agreement." The grounds which it advances for the contention are: that, by long understanding, Signal Maintainers are not to work on Bell equipment; that, though there is no question that Management was within its rights to call the claimant out when the CTC system was discovered not to be functioning properly and though the claimant would concededly not have been entitled

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* Paragraph (d) of the Rule concerns the performance of work outside an employe's assigned maintenance territory -- something which is not here involved.

to extra compensation had he been confined to "work subject to the Scope of this Agreement," the fact is that the claimant in due course made a firm determination that Bell equipment was the source of the difficulties and that he thereafter did no repair work on Carrier equipment; and that, once he made the determination, he was entitled to be released or to receive extra compensation for the time he was required to stay on.

We are overruling the contention. It seems to us that it would be plain surprising if it were true that a Signal Maintainer, called out for the corrective purposes here presented, would not be expected to remain until the malfunctioning of the Carrier's transmission lines is in fact cured. It would be surprising, in other words, to find an arrangement by which the Signal Maintainer would go home as soon as he had made the "Bell" diagnosis, rather than thereupon remain present to check on the progress of the repairs to the Bell equipment and to make sure that the completion of those repairs indeed meant that the Carrier's CTC system was restored to good working order. The proper presumption, we believe, is that the Signal Maintainer would do precisely as the Claimant here did.

This amounts to saying that a conclusion to the contrary requires the strongest sort of supporting evidence. Such evidence is wholly lacking. The Organization has merely asserted that, by practice or understanding, a Signal Maintainer is released upon making the "Bell" diagnosis in the kind of circumstance here involved. What evidence there is comes from the Carrier's side. And what it shows is that a prior case of well-nigh identical facts was brought by the Organization, resisted by the Carrier, and thereupon not appealed by the Organization.

We are holding that the claimant was engaged in "work subject to the Scope of this Agreement" and therefore not entitled to the wages he is asking for.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980.