

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23323  
Docket Number SG-23434

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Southern Pacific Transportation Company  
{ (Texas and Louisiana Lines)

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Texas and Louisiana Lines)

Claim No. 1

(a) The Southern Pacific Transportation Company (Texas and Louisiana Lines) has violated the Memorandum of Agreement dated June 7, 1972, between the company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen.

(b) That tower 30 Signal Maintainer E. E. Eichblatt be allowed compensation for eight (8) hours on the date of January 20, 1979, which was deducted by authority of letter dated February 7, 1979, from Signal Supervisor R. B. Jeffries.

Claim No. 2

(a) The Southern Pacific Transportation Company (Texas and Louisiana Lines) has violated the Memorandum of Agreement dated June 7, 1972, between the company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen.

(b) That Signal Maintainer M. R. Robinson be allowed compensation for eight (8) hours on the date of January 20, 1979, which was deducted by authority of letter dated February 7, 1979, from Signal Supervisor R. B. Jeffries.

Claim No. 3

(a) The Southern Pacific Transportation Company (Texas and Louisiana Lines) has violated the Memorandum of Agreement dated June 7, 1972, between the company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen.

(b) That Signal Maintainer F. M. Kratochvil be allowed compensation for eight (8) hours on the date of January 20, 1979, which was deducted by authority of letter dated February 7, 1979, from Signal Supervisor R. B. Jeffries."

OPINION OF BOARD: This dispute is a consolidation of three claims filed by three monthly rated signal maintainers. The facts underlying the claims are identical. On Saturday, January 20, 1979, the Carrier called each of the claimants once between 8:00 a.m. and 4:00 p.m. None of the claimants was home to take his call. The Carrier deducted eight hours of pay from claimants' monthly salary. The three signalmen then filed the instant claims for the deducted pay which are properly before this Board.

The following rules and memoranda of agreement are relevant to this controversy:

"601(a) The following employees will be paid on the basis of a monthly rate as provided in Rule 600:

...

"5. Monthly Rated Signal Maintainer -  
211 2/3 hrs. per month" (now 213 hrs. per month)

"601(c) 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."

The pertinent language of Article III of the December 4, 1970 Memorandum of Agreement is:

"Q. If a monthly rated employee paid on the basis of 211 2/3 hours per month makes himself unavailable on Saturdays, how is this time treated?

A. If he lays off, and not available on Saturday, deduct 8 hours from the monthly rate of pay.

"If he does not lay off but is 'out of pocket' when called, making it necessary to call another employee who is paid overtime for the service, an equal amount paid will be deducted from the monthly earnings, not to exceed 8 hours. Two-thirds (2/3) of such time deducted from monthly earnings will be deducted from 21 2/3 hours, and overtime will begin after that time."  
(Emphasis added)

The relevant portion of the Memorandum of Agreement dated June 7, 1972 states:

"When it is necessary to call any of the above monthly-rated Signal Maintainers for service outside of regularly assigned hours or to assist hourly-rated Maintainer, the monthly-rated Signal Maintainer assigned to the position will be called to perform such service on his assigned territory. If such monthly-rated Signal Maintainer is not available, an adjoining monthly-rated Maintainer will be called..."

"The above monthly-rated Signal Maintainers recognize their responsibilities to respond for service when called, and when called will respond as promptly as possible. When called and not available, the overtime made by adjoining maintainer will not be used to compute the 21 2/3 hours before overtime begins, and the corresponding time will be deducted from the overtime over 21 2/3 hours of the Maintainer who was unavailable Mondays through Saturdays."  
(Emphasis added)

The Organization argues that the 1972 agreement supersedes both Rule 601 and Article III (which is an agreed interpretation of Rule 601). According to the 1972 memorandum, monthly rated maintainers who are unavailable when called suffer loss of overtime pay and no deduction is authorized from their monthly salary. Alternatively, the employees contend that even if Article III controls our decision, the three claimants did not lay off the entire day but they were "out of pocket" when called. If the signalmen were "out of pocket", the amount to be deducted from the monthly maintainers' salary is dependent on the amount paid to the replacement.

The Carrier urges us to sustain its action because the employees did lay off within the meaning of Article III and, thus, eight hours was properly deducted from their monthly rate of pay. Furthermore, the Carrier argues that the 1972 memorandum is not relevant since it governs the handling of calls to maintainers made outside of regularly assigned hours. According

to the Carrier, Rule 601 expressly makes Saturday a regularly assigned work day and so Article III is controlling.

The relationship between Rule 601(c) and the June 7, 1972 memorandum was thoroughly discussed in a recent ruling of this Board. Third Division Award No. 23058 (Roukis). In that decision, we placed the burden on the Carrier to demonstrate that the claimants did not work the full 213 hours, notwithstanding that the claimants were called during their regular assignment. Thus, our prior decision controls this dispute unless Article III changes the result. In Award No. 23058 we did not consider Article III since the Carrier did not timely raise the issue on the property. Here, the Carrier not only properly raised Article III on the property but it heavily relies on the Article to support its action.

Thus, the issue is whether these claimants laid off on January 20, 1979 or whether they were merely "out of pocket". If they were "out of pocket" claimants are entitled to eight hours of pay since there is no showing in the record that the Carrier called a replacement or how many hours any replacement was paid. The Organization contends that employees must take an affirmative act to be considered laid off. However, an affirmative act is not necessary if an employee recklessly disregards his assignment. In this case, we see no evidence that the claimants either affirmatively laid off or that they recklessly disregarded their work assignments. The Carrier called each claimant only once and while we do not know precisely when the Carrier called, we cannot assume from one phone call that claimants had laid off for the day. Thus, the claimants were "out of pocket" when called on January 20, 1979. Since there is no evidence concerning amounts paid to a replacement, each claimant is entitled to eight hours pay, pro rata, at the monthly rate in effect on January 20, 1979.

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

Claims (1), (2), and (3) are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.