

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23339
Docket Number SG-23140

Arnold Ordman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

Claim on behalf of Signal Foremen F. R. Taylor, R. S. Rawls and R. D. Platt for overtime for attending foremen's meeting in Jacksonville, Florida on July 14, 1978."

General Chairman's file: 132-R S Rawls-78
133-F R Taylor
134-R D Platt

(Carrier's file: 15-16 (78-10) J)

OPINION OF BOARD: Claimants are Signal Foremen and monthly rated employees. Rule 45(c) of the Agreement dictates, so far as here relevant, that, except for service on "rest days," no signal foreman shall be paid overtime until he has 185 1/3 credited hours of service for the month. Under Rule 45(b) service performed by signal foremen on "rest days" is paid for under Rule 16. Rule 16(d) provides, in relevant part, that work in excess of 40 hours per week shall be paid for at time and one half the basic straight time hourly rate.

The claim here arose when Carrier assigned the three Claimants to attend a foreman's meeting on Friday, July 14, 1978. Claimants had already put in 40 hours of work that week inasmuch as their normal work week consisted of 10 hours work per day from Monday through Thursday. Claimants, considering Friday a rest day, like Saturday and Sunday, put in a claim for overtime under Rule 16. Carrier took the position that Rule 16, providing for time and one half, was not applicable and compensated the Claimants only to the extent that the time spent attributable to the foreman's meeting exceeded the 185 1/3 monthly limit provided for in Rule 45(c). Claimants seek the difference between the compensation claimed under Rule 16 and the compensation granted under Rule 45.

The critical question is whether Friday is a rest day within the meaning of Rule 45(b) and (c). If so, then Rule 16(d) plainly governs.

Preliminarily, Organization contends that Carrier may not assert here that Friday is not a rest day because Carrier never raised that issue while the dispute was being handled on the property. We reject this contention. Carrier asserted from the outset that Rule 16(d) was not applicable and that Claimants had been paid in accordance with the controlling provisions of Rule 45(c). Since Rule 45(c) explicitly excludes rest days from its provisions, Carrier necessarily took the position that Friday was not a rest day.

Addressing ourselves to the merits, it appears that Saturday and Sunday are concededly rest days. This follows from the underlying scheme of the Agreement which is predicated essentially on a normal 40 hour work week of five days a week and eight hours per day with Saturdays and Sundays off, if possible. However, since about 1970 the parties have agreed to permit floating signal gangs to fulfill their 40 hour work week requirement by working four 10-hour days. The four days assigned were Monday through Thursday. The days off were Friday, Saturday and Sunday.

The parties are, of course, empowered to change the terms of their Agreement if they mutually elect to do so. The original Agreement was thus modified in the manner indicated. A natural reading of the change here made is that, just as Saturday and Sunday were originally designated as rest days because they were the days off from work, Friday would now also be a designated rest day because the work days now extended from Monday through Thursday.

Indeed, it would appear that Carrier essentially adopted this reading. Thus, Carrier concedes that, so far as signal gangs are concerned, Friday, Saturday and Sunday are now considered as rest days. The provisions of Rule 13(b) that a work week for all employees shall be 40 hours, consisting of five days of eight hours each, with two consecutive rest days off in each seven, was abandoned by mutual consent. So, too was the provision that employees working in excess of eight hours per day be paid overtime for the period of time worked in excess of eight hours. Workers on the four day a week schedule receive overtime only for work time in excess of 10 hours per day.

Consistent with the foregoing changes, Organization argues that Fridays should be considered a rest day for signal foremen just as it is considered a rest day for signal gangs. The same operative facts would seem to apply. The work days were Monday through Thursday. Friday, like Saturday and Sunday, would be a day off. Yet, here, Carrier resists such a reading and insists that in this instance, the original scheme of the Agreement which contemplated a five day work week with only Saturdays and Sundays as days of rest must be adhered to. It follows from Carrier's view that Friday would be considered a working day and not a day of rest notwithstanding the four day work week and that Carrier would not be subject to costs which might otherwise be imposed if Rule 16(d) was applied.

We are not impressed with Carrier's assertion on the record that other foremen have not made overtime claims of this nature and that this indicates that such claims are not warranted. Nor are we impressed with Organization's showing that in prior instance a signal foreman was admittedly paid overtime at time and one half for work performed on a Friday. Neither Carrier's assertion nor Organization's showing establishes a past practice or precedent which would be controlling here.

However, we do find, upon all the evidence presented, that when the parties agreed to the four day 10-hour per day work arrangement here outlined, it was intended by them that Friday, like Saturday and Sunday, be considered a day of rest, not only for the signal gangs, but also for the signal foremen. By operation of the Agreement, therefore, Carrier was obligated to pay the Claimants overtime as provided in Rule 16(d).

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 Employee involved in this dispute are respectively Carrier and Employee 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:



Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1981.