

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23900
Docket Number SG-23754

Carlton R. Sickles, Referee

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

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

Claim No. 1

(a) The Carrier has violated the current Signalmen's Agreement and particularly Rules 16 and 50.

(b) Carrier should now be required to compensate Claimant W. McCollim for six (6) hours at his time and one half rate.

(Carrier file: 15-16(79-14) J General Chairman's file: 18-@ McCollim-79)

Claim No. 2

(a) The Carrier has violated the current Signalmen's Agreement and particularly Rule 16.

(b) Carrier should now be required to compensate Claimant W. McCollim for twelve (12) hours at his time and one half rate.

(Carrier file: 15-16(79-16)J General Chairman's file: 29-W McCollim-79)

Claim No. 3

(a) The Carrier has violated the current Signalmen's Agreement and particularly Rules 16 and 50.

(b) Carrier should now be required to compensate Claimant W. McCollim for eighteen hours and twenty five minutes (18'25") at his time and one half rate.

(Carrier file: 15-16(79-8)J General Chairman's file: 10-W McCollim-79)

Claim No. 4

(a) The Carrier has violated the current Signalmen's Agreement and particularly Rule 16.

(b) Carrier should now be required to compensate Claimant W. McCollim for twelve hours and twelve minutes (12'12") at his time and one half rate.

(Carrier file: 15-16(79-18)J General Chairman's file: 36-W McCollim-79)"

OPINION OF BOARD: The claimant occupied a position which was paid at a monthly rate based on 213 hours.

The provisions of the working agreement are as follows: "(a) Electronic Signal Technicians and Retarder Yard Signal Technicians will be paid a monthly rate based on 213 Hours. Regular hours of assignment shall be eight (8) hours per day, five (5) days per week. They will be allowed two (2) rest days per week, which will be Saturday and Sunday, if possible, and shall be off duty on holidays, as outlined in Rule 15-1/2, as amended by National Agreements. Services on Sunday and holidays and all other service in excess of 213 hours per month shall be paid for at the applicable overtime rate."

Subsequent to the establishment of the position, the Carrier discovered that the Claimant had been paid for overtime outside of his regular working hours and for service performed on Saturdays, and it discontinued such payments. Claimant seeks to re-establish the payment for these alleged overtime periods.

In its submission, the Carrier outlines its understanding of the language of the Agreement as follows: "The monthly compensation paid incumbents of subject positions covers all service performed during the calendar month with the exception of work performed on Sundays and holidays. It also provides that work in excess of 213 hours per month will be paid at the overtime rate. It was anticipated that the employees would be allowed Saturday and Sunday as rest days, if possible, and it has been the practice to allow Saturday as a rest day whenever possible. However, it was contemplated that the incumbents would be compensated for these Saturdays when they do not work; and if their services are needed, then it is necessary that they report for duty. If the total number of aggregate hours, including Saturday work, exceeds 213 in a given month, then they are compensated for any overtime hours made in excess of 213 hours. There are many months when the incumbents of those positions do not work an aggregate of 213 hours during the entire month and they still receive 213 hours pay."

We are then called upon to decide whether the subsequent interpretation by the Carrier which does not authorize payment for overtime and work on Saturdays unless it is for hours in excess of 213 per month is valid and whether the payment by the Carrier during the previous year of overtime for such employment would bar the employer from changing its interpretation of this provision. We are convinced that the language of the Rule is extremely clear and that there is no basis in this Rule for the payments which were made to the Claimant and, therefore, will not support the continuation of these payments.

We are further convinced that the fact that a mistake was made by the Carrier in making these payments until discovered does not establish such a precedent that it would overcome the clear language of the Agreement.

Claimant also seeks to be reimbursed for phone calls. A review of the Awards indicates that the mere making of a phone call does not in itself give cause to compensation unless the employee performs some action with respect thereto, and there is no allegation that this was the case here.

For these reasons, we will deny the claim.

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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1982.