

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24617
Docket Number SG-24223

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Central of Georgia Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

(a) Carrier violated the present Signalmen's Agreement particularly Rule 49 among others, when the Carrier deducted thirty (30) hours overtime Foreman Dumas had worked not in case of emergency on December 7, 14 and 15, 1979 and paid him for only eight (8) hours at the one-half time rate for December 15, 1979.

(b) Carrier should now be required to compensate Central of Georgia Signal Foreman J. B. Dumas for twenty (20) hours at his overtime rate of pay, in addition to his monthly salary for the month of December 1979, because of this Agreement violation.

OPINION OF BOARD: Claimant herein is a Foreman on a Signal Gang which generally works away from home. The Gang, pursuant to Rule 25, elected to work four 10-hour days Monday through Thursday in order to achieve a three day rest period to go home. Due to the work pressures (non-emergency) Carrier instructed the Gang to work ten hours on Friday, December 7, 1979, ten hours December 14, 1979 and ten hours on Saturday, December 15, 1979. Subsequently, Claimant received payment at overtime rates for all three days. Carrier later deducted the payments for the two Fridays involved claiming inadvertent error, triggering the dispute herein.

Claimant is a monthly rated employee governed by the provisions of Rule 49, which provides in pertinent part:

"Rule 49. The following minimum rates of pay are hereby incorporated in and made a part of this agreement and they shall remain in effect until and unless changed in the manner provided by the Railway Labor Act:

(a)	Monthly Rate	Hourly Rate	Hours Comprehended
Signal Foreman	\$2225.39	\$10.45	213
Signal Inspector	2210.17	10.38	213
Relay Repairmen-Relief Mtr.	2196.18	10.31	213
Traveling Signal Maintainer	2133.20	10.03	213

"Except for service on rest days, the above salaries cover all services performed. These employees shall have one regularly assigned rest day each week, which shall be Sunday. When service is required on the assigned rest day, it shall be paid for, in addition to the monthly rate, at the overtime rate in accordance with rules of the agreement applying to hourly rated employees. No overtime will be worked and no work will be required on the sixth day of the work week or on holidays by these classes of employees unless in case of emergency on their regular assignments; if worked on such days not in emergency on their regular assignment, overtime rate shall apply as above."

Petitioner's position is based on its interpretation of Claimant's basic work week. Petitioner asserts that since Claimant had worked for two consecutive Fridays after working four 10-hour days immediately prior to those days, the Fridays must be considered his sixth day of work. The Organization contends that Carrier is seeking an unfair advantage and benefit "... by manipulation of the four 10-hour day work week arrangement and a sustaining award is justified."

Carrier argues that Claimant as a monthly rated employee is paid a monthly rate for all services rendered pursuant to Rule 49 with certain limited exceptions. Carrier asserts that the two Fridays involved in this dispute were the fifth work days of the work week regardless of the hours worked on the first four days. It is further observed that the Claimant has no "normal 40 hour week" under the terms of Rule 49.

The issue involved in this dispute has been before this Board on two previous occasions. In both instances the Board has found that no penalty payments were appropriate under closely similar circumstances (Awards 15543 and 21343). Further in Award 8 of Public Law Board 2004, the Board held:

"The first sentence of the penultimate paragraph of Rule 49 (a) specifically states that 'Except for service on rest days, the above salaries cover all services performed.' Here, Claimant had been paid pursuant to the third sentence of the penultimate paragraph which provides for payment of services required on the assigned rest day."

"Hence, we find that Claimant has been properly paid when paid the overtime for the Sunday hours worked. However, for the service performed from 12:01 a.m. on Monday to 3:00 a.m. on Monday, Claimant is covered by the phrase of Rule 49(a) 'the above salaries cover all services performed.' Third Division Award 15543, as well as Award 21343, in effect held that no payment was necessary for services performed during any period of time which occurred during the employees first five days of the work week. In keeping therewith, the fact that such period of time occurred prior to the time that Claimant normally commenced work on Monday morning does not make it distinguishable from a period of time when Claimant may be called to perform work either after his usual quitting time, or, before he commences work, during, of course, the first five days of his normal work week, Monday through Friday. [Emphasis added] PLB 2004, Awd. 8, SG vs. CG (Van Wart) (Exhibit G)."

There appears to be no reason to depart from the reasoning expressed above; further there has been no change in the applicable contractual language. The issue should be laid to rest under the principle of "res judicata". The Claim must be denied.

FINDINGS: The Third Division of the Adjustment board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.