

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25494
Docket Number SG-25422

Marty E. Zusman, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company on behalf of Traveling Signal Maintainer W. S. Hardy, headquarters Rome, Georgia, assigned territory Chattanooga, Tenn. to Bremen, Georgia, assigned working hours 8 AM to 4:30 PM Monday through Friday, for the following:

Carrier violated the Signalmen's Agreement, particularly Rules 6 (a) and 49 among others, when he was sent away from his assigned maintenance territory the week of August 2, 1982, to perform construction work with eight other signal employees and was required to work in excess of eight hours a day not in case of emergency but was not paid for the overtime worked.

Carrier now be required to compensate Traveling Signal Maintainer W. S. Hardy for 13 hours at his overtime rate of pay, in addition to any other pay he has received, because he was required to perform non emergency overtime work off of his assignment, work that is normally performed by a signal gang. [General Chairman file: CG-75. Carrier file: SG-549]

OPINION OF BOARD: In the instant case this Board is being asked to reconsider its prior interpretations of Rule 49(a), the circumstances herein based upon the affirmation that the "Claimant was not performing maintainer's work...as covered by the Scope of the Agreement", Rule 6(a). A thorough review of the record fails to provide the necessary preponderance of probative evidence to substantiate that the construction work is neither maintenance nor work covered under the Claimant's monthly rate. The National Railroad Adjustment Board has held repeatedly that the weight of the evidence for any claim is the responsibility of the moving party (Third Division Awards 24965, 19506). A violation of Rule 6(a) is not documented by the weight of substantial probative evidence as developed on property.

As for a violation of Rule 49(a), Public Law Board 2004, Award 8 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". This interpretation was the result of Third Division Awards 15543 and 21343 and upheld by Award 24617. We are in concurrence with the reasoning of those past Awards finding similar factual circumstances and conditions in the case at bar. This Board must deny the claim under the principle of "res judicata".

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: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.