

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26026

Docket Number SG-26110

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of
Railroad Signalmen on the Elgin, Joliet and Eastern
Railway Company:

Claim on behalf of Sheridan Vale for 2 hours' pay at the punitive rate of pay account of being required to work overtime at Crossover Switch No. 74 at Stockton No. 2, on July 28, 1983 and not being paid in accordance with Rule 14. Carrier file RS-2-83."

OPINION OF BOARD: The Organization contends that Carrier violated Rule 14 of the Controlling Agreement, when it (Carrier) failed to compensate properly Claimant for two hours pay at his punitive rate of pay when he was assigned regular or ordinary service outside of his regular assigned hours on July 28, 1983. It asserts that Rule 14 requires that monthly rated employees assigned to perform regular or outside service outside of regular assigned hours be paid at the overtime rate provided in the Agreement. The Organization maintains that an emergency was not present as contended by Carrier when Claimant repaired the No. 74 crossover switch and accordingly, argues that he is entitled to the overtime payment requested. It observes that an emergency as defined in Rule 42 of the Agreement includes such contingencies as a flood, snowstorm, hurricane, tornado, earthquake, fire or labor dispute. Rule 14 reads:

"RATES OF PAY OF FOREMEN AND OTHER MONTHLY RATED EMPLOYEES

The monthly rate of monthly rated employees covers all service performed during the calendar month except as provided herein. All monthly rates of pay are based on 213 hours per month. A monthly rated employee shall be assigned one regular rest day each week, Sunday if possible, and when required to perform service on such rest day will be allowed extra compensation at the overtime rate. The straight time hourly rates for monthly rated employees shall be determined by dividing the monthly rate by 213. Overtime rate for monthly rated employees shall be determined by multiplying the straight time hourly rate by 1 1/2. Monthly rated employees assigned by the management to perform regular or ordinary service outside of regularly assigned hours will be compensated at the overtime rate provided herein for such service."

Carrier does not deny the basic interpretation that monthly rated employees assigned to perform regular or ordinary service outside of regularly assigned hours are entitled to overtime compensation, but argues that a recognizable exception was present, namely an emergency which precludes the application of the overtime requirement. It asserts that the loss of a centralized traffic control power switch created an emergency situation that necessitated, by definition, prompt and effective corrective action. It avers that due to the heat that day, the rail displaced to such an extent that the mechanism of the power switch made the crossover switch inoperable. It notes that the density of road and yard traffic as measured by ton miles, ranks the highest on the property and thus, any unpredictable, sudden cessation of traffic would have to be considered an emergency. In effect, it contends that since excessive heat (weather) caused the running rail and switch points to be displaced and since no amount of preventive maintenance could have prevented this outcome, it would be illogical to conclude that an emergency was not present.

In our review of this case, we concur with Carrier's position. In a predecessor Award dealing with an essentially similar issue and involving the same parties, we found that the repair of a gate arm at a public highway crossing constituted emergency duty and we denied the claim for overtime. (See Third Division Award No. 25851.) Based on the record herein and consistent with our determination in Third Division Award No. 25851, we find that an emergency existed at No. 74 crossover at Stockton, Indiana on July 28, 1983. We find no distinction that would warrant a variant interpretation or a finding that said work was clearly of a regular or ordinary nature and, as such, we are compelled to 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 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.

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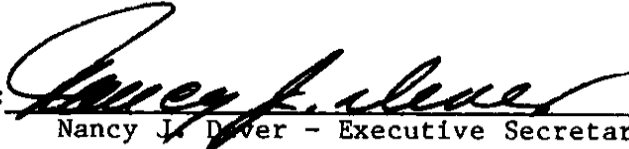
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 28th day of May 1986.