

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago Northwestern Transportation Company (CNWT):

Claim of the Local Grievance Committee, Local 98, Brotherhood of Railroad Signalmen, on the Chicago and Northwestern Transportation Company, that:

(a) The carrier violated the current Signalmen's Agreement, especially the Memorandum of Agreement dated Nov. 5, 1981 covering 'Incumbent Rates' for Certain Positions, when on May 21, 1988 the carrier failed to compensate Mr. T. E. Stirling at his appropriate lead signal maintainer's overtime (rate and one-half) rate of pay for 6.3 hours for work performed off of his assigned territory.

(b) The carrier now be required to compensate Mr. T. E. Stirling at his respective lead signal maintainer's overtime rate of pay for 6.3 hours - minus the 6.3 hours at one-half rate which the carrier did allow him for that day." G. C. File CN&W-GAV-144. Carrier File 79-88-12.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 21, 1988, Claimant was called on his rest day (Saturday) to repair signal trouble away from his assigned territory for 6.3 hours. Claimant received his regular 8 hours of straight time plus 6.3 hours one-half (1/2) time.

The Organization argues that this Claimant is covered by a 1981 Memorandum of Agreement under which he is entitled to a monthly rate of pay and under the provisions of the former Chicago Great Western Agreement, he was entitled to receive full overtime compensation for work off of his assigned territory on a Saturday.

Carrier agrees with the factual assertions set forth in the first paragraph above but contends it was an emergency situation, and the controlling Agreement only provides for Sunday overtime.

Although the Carrier mentioned an "emergency" early in the handling on the property, the record does not provide us with a factual basis for assessing that contention.

There is evidence that the employees, including this Claimant, have been compensated in the manner claimed herein in the recent past. Carrier replies that those payments were "in error."


Certainly there is confusion as to which Rules Agreement applies to Claimant under this record. But the past conduct of the parties is indicative of their intention. On this record we will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deva - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.