

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30610
Docket No. SG-30737
94-3-92-3-683

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Houston Belt & Terminal Railway Co.:

- (a) Claim on behalf of J. Lara, account Carrier's violation of the Signalmen's Agreement, particularly Rules 602 and 100 when it required him to perform ordinary maintenance work that is not part of his regular and usual assignment on the sixth day of his assignment, but failed to compensate him.
- (b) Carrier should now be required to compensate Claimant two (2) hours pay at his time and one-half rate for service rendered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant is a monthly rated Signal Inspector. His normal workweek is Monday through Friday, with assigned hours from 6:30 am to 2:30 pm. His monthly rate is based on 213 hours, and covers "all work subject to the Scope of the Agreement performed on the position to which assigned during the first five days of the work week." Sometime in November 1991, a track maintenance undercutting machine severed underground trunk cables in Zone 5, disrupting train and crossing operations in that area. Claimant, along with a number of other Signal Department employees, was assigned to work on the repair and restoration of the signal and crossing devices. Claimant was on duty two hours beyond his scheduled quitting time on Tuesday, November 26, 1991. He seeks overtime pay for this service, on the basis that the work was not an emergency and he was required to perform tasks outside the scope of his normal duties of Signal Inspector.¹

Carrier denies the Claim on the basis that Claimant is a monthly rated employee, the work was an emergency, and it was entitled to use him on the restoration of service project without additional compensation.

Rule 602 (c) of the Agreement reads:

"Except as provided herein and in Rules 305 and 313, the monthly rate shall be for all work subject to the Scope of the Agreement performed on the position to which assigned during the first five (5) days of the work week and shall include other than the ordinary maintenance and construction work on the sixth day of the work week and holidays."

Rule 602 has two parts. The first provides that the monthly rate shall cover all work subject to the Scope of the Agreement (performed on the position to which assigned) during the first five days of the workweek. The second provides that the monthly rate shall cover work other than ordinary maintenance and construction work on the sixth day of the workweek (and on holidays).

¹ The Statement of Claim mentions the "sixth day of his assignment," but this is not the case, as November 26, 1991 was a Tuesday.

With regard to the first part, "all work" can only be read to mean what it clearly states, the monthly rate would cover "all work subject to the Scope of the Agreement performed on the position to which assigned during the first five (5) days of the work week." During the first five days of the workweek, "all work" would include ordinary maintenance and construction work as well as work that would not be ordinary maintenance and construction work. With regard to the second part of the rule, the monthly rate would also include work other than ordinary maintenance and construction work performed on the sixth day and holidays.

Inasmuch as the work performed by Claimant was during the first five days of his workweek, to prevail in the overtime claim, it must be demonstrated that the work was not subject to the Scope of the Agreement performed on the position to which assigned during this first five days of the workweek. It makes no difference that the work may not actually be "other than ordinary maintenance and construction work," as argued by the Organization while the matter was being handled on the property, because, even if it were not work of this type, that consideration is only valid on the sixth day and on holidays. We are not dealing with either in this case.

Evidence is missing that the work performed by Claimant between 2:30 pm and 4:30 pm on November 26, 1991, was not subject to the Scope of the Agreement performed on the position to which Claimant was assigned. Instead the opposite is apparent. For example, On January 21, 1992, in an appeal letter of the Organization stated:

"On November 26, 1991 Claimant Lara was required to perform two hours' work outside of, and continuous with, his regularly assigned work hours on a planned work project."

The work was obviously subject to the scope of the Agreement. Further, if the work were continuous with the work performed during Claimant's regularly assigned hours, as the Organization states it was in the appeal, it is difficult to envision how it would not be performed on the position to which assigned during the first five days of the workweek.

Carrier has noted that the primary duties of the Claimant is testing and inspecting of signal systems. In this matter, once the cable was repaired, the system had to be tested. Claimant worked along side other signal forces in placing the system back into operations. To now provide additional compensation for working past the eighth hour when the monthly rate provides that it covers all work during the first five days of the workweek, would be to provide a benefit that the Organization was unsuccessful in securing through negotiations, it is argued. With this the Board concurs. The claim is without merit. It must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.