

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31976
Docket No. SG-32295
97-3-95-3-146**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 (HBT):

Claim on behalf of W. W Wright and D. L. Kemp for payment of a differential of \$.06 per hour beginning April 16, 1993, account Carrier violated the current Signalmen's Agreement, particularly Rule 601, when it failed to provide the Claimants, who were required to have an FCC Second Class or better license, with the differential required to be paid such employees in addition to their regular rates. General Chairman's File No. 93-145-H-A. BRS File Case No. 9581-HBT."

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 were given due notice of hearing thereon.

Claimants Wright and Kemp are communications employees assigned to the positions of General Foreman C&E and C&E Foreman, respectively. This claim seeks a \$.06 per hour differential for Claimants under Rule 601 of the Agreement because they are required to hold a FCC license.

The relevant rules in the 1975 Agreement state:

"Rule 601. Differential Rate - FCC License: Employees who are required to secure FCC Second Class or better license or permits for use on their assignments shall be paid a differential rate of six (6) cents per hour in addition to the rate provided for the position held. This shall not apply to position of Signal Technician.

Rule 602. ...

(c). 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 ordinary maintenance and construction work on the sixth day of the work week and holidays."

Claimants are monthly paid. Further, as communications employees, Claimants were previously represented by the IBEW. The 1975 Agreement between the Organization and the Carrier was negotiated prior to the time the Organization asserts that the parties agreed to extend coverage of the Agreement to the communications employees.

An initial reading of Rule 601 supports the Organization's position. Because Claimants must have a FCC license, they **"shall be paid a differential rate of six (6) cents per hour in addition to the rate provided for the position held"** [emphasis added]. There does not appear to be much doubt in the parties' use of the word **"shall."**

Further supporting the Organization's position is the fact that Rule 601 refers to only one exception, for Signal Technician. The Organization thus asserts that if the parties intended other exceptions to apply, they would have so provided. Therefore, under the Organization's theory, where coverage is subsequently extended to employees such as Claimants, as the Organization asserts, that exception in Rule 601 still applies

indicating that all other employees required to hold a FCC license are entitled to the differential.

However, while the result urged by the Organization first appears to flow from the seemingly clear language of Rule 601, a reading of Rule 602(c) causes an ambiguity. In pertinent part, Rule 602(c) states that for monthly rated employees, the "monthly rate shall be for all work subject to the Scope of the Agreement" [emphasis added]. While a reading of Rule 601 supports the Organization's position that Claimants are entitled to the differential ("shall be paid"), a reading of Rule 602(c) supports the Carrier's position that because Claimants are paid on a monthly basis and that monthly payment is for "all work", Claimants are therefore not entitled to the differential they seek in this case.

Given that ambiguity, the rules of contract construction can be used to attempt to discern the parties' intent. One of the most important rules of contract construction is to look to past practice to explain ambiguous language. The record specifically shows that Claimant Kemp was assigned his Communications Foreman's position effective May 1, 1979 "account qualified with F.C.C. License." Therefore, a past practice well in excess of at least some 14 years' duration shows that the Organization neither sought nor were Claimants paid the differential they now argue is required. That past practice sufficiently supports the Carrier's assertion that the parties never mutually agreed that the Agreement would be interpreted in a manner to pay the Rule 601 differential to Claimants.

To the extent that Rule 602(a) does not specifically mention Claimants' communications classifications, that cannot change the result. By the same token, Claimants' communications classifications do not appear in other provisions of the Agreement where coverage of employee classifications is defined. That absence of specificity only serves to underscore our conclusion that the governing language is ambiguous and that past practice determines the outcome of this case.

The end result of payment of the FCC license differential sought by the Organization on Claimants' behalf will have to be achieved through the negotiation process and not from proceedings before this Board.

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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 6th day of May 1997.