Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37707
Docket No. SG-36929
06-3-01-3-474

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Continuing claim on behalf of J. M. Fulbright for compensation of all overtime and standby time at the time and one-half rate beginning on August 1, 2000, and continuing until the violation ceases. Account Carrier violated the current Signalmen's Agreement, particularly the Implementing Agreement dated December 1, 1986, and Rule 8 when Carrier refused to allow the Claimant to convert from monthly rates to hourly rates. Carrier's File No. 1244887. General Chairman's File No. S-8-051. BRS File No. 11708-UP."

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.

The claim of the Organization is that the Carrier violated the Agreement when the Claimant was denied his right to elect to convert from payment at the monthly rate to an hourly rate. The claim requests payment for all overtime and for required standby service until the violation stops.

This is a contract interpretation dispute wherein the Organization alleges violation of several interrelated provisions. The Organization points to Section 3 of the December 1, 1986 Agreement, Section 1B of the June 15, 1999 Implementing Agreement and Rule 8 of the Collective Bargaining Agreement (CBA) which permits the Claimant to convert his pay from monthly to hourly.

Section 3 of the December 1, 1986 Agreement reads, in pertinent part, as follows:

> "Existing monthly-rated positions on the Missouri Pacific Railroad Company will be reclassified as hourly-rated positions as shown on Attachment "A". An employee assigned to a monthly-rated position of Communications Maintainer on the effective date of this Agreement must elect one of the following options within sixty (60) days from the effective date of this Agreement.
>
> 1. To continue to be paid at the existing monthly rate under rules applicable to monthly-rated positions until such time as the employee voluntarily vacates the reclassified position . . .
>
> 2. To be paid as hourly-rated employees under applicable Collective Bargaining Agreement rules.
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> An employee failing to make an election will be considered as having elected Option 1.
>
> Subsequent to the sixty (60) day period, such employees may elect upon fifteen (15) days advance written notice to the General

Director Communications-Facilities with copy to the General Chairman to elect Option 2 . . . ."

The Organization argues that under Section 3 of the 1986 Agreement, the Claimant had held a monthly rated position. He thereafter gave the Carrier 15 days written notice that he elected Option 2, to be paid as an hourly-rated employee. Section 1B of the June 15, 1999 Implementing Agreement states, "All understandings, interpretations, side letters and agreements applicable to employees covered by the CBA with IBEW will apply to Telecommunications employees formerly covered by the CBA with BRS."

The Organization points out that the Claimant was clearly covered under the 1986 Agreement by Option 2 of Section 3. The June 15, 1999 Implementing Agreement incorporated all of the applicable provisions covered with the IBEW to Telecommunications employees, such as the Claimant.

Accordingly, the Claimant was improperly compensated by the Carrier. He elected Option 2. He requested in writing that he be converted from the monthly rate to an hourly rate. Rule 8 (Hourly Compensated Employees) reads, in pertinent part, as follows:

"(C) For hourly paid employes, all overtime continuous with regular bulletin hours will be paid for at the rate of time and one-half until relieved.

* * *

(E) For continuous service after assigned hours, hourly paid employes, will be paid time and one-half on actual minute basis, with a minimum of one hour for any such service performed.

* * *

(G) Hourly paid employes called or required to report for work, and reporting, but not used, will be paid a minimum of 4 hours at straight time rates.

* * *

(K) Except as otherwise provided . . . all overtime for hourly paid employes beyond sixteen hours service in any twenty-four hour period, computed from starting time of employe's regular shift, shall be paid for at rate of double time.

* * *

(M)(1) Hourly paid employes worked more than five days in a week shall be paid one and one-half time, the basic straight–time rate for work on the first and second rest days of their work week, . . ."

The Organization alleges that the request for payment for all overtime and standby service at the hourly rate was improperly refused.

The Carrier denied the applicability of Section 3 of the December 1, 1986 Agreement. It argued that when the BRS and IBEW Agreements were merged with the Implementing Agreement, BRS-represented employees remained under their monthly pay structure and were not able to utilize Section 3, converting to an hourly rate under Option 2. The Carrier argued that the implementation "guaranteed the BRS employee would remain under their current pay structure of monthly compensation."

The Carrier further maintained that the Implementing Agreement of May 25, 1999 adopted the interpretations for BRS-represented employees of prior terms and conditions. At no time was there ever an interpretation permitting BRS-represented employees to convert from a monthly to an hourly rate of pay. At no time was an employee ever compensated "merely because the . . . employee may be called to

work on his rest day. . . ." The Carrier points to Rule 7 which specifically provides for compensation on rest days. It points to other Notes to that Rule which contain no language compensating an employee for being subject to a call.

The Carrier also denies violation due to Section 4A of the Implementing Agreement which states that:

> "BRS-represented employes transferring to the new CBA with BRS pursuant to this Agreement shall maintain their current rates of pay for as long as they remain on a BRS-represented position."

It argues that this specifically overrides all general provisions of the Implementing Agreement that place BRS-represented employees under the Agreement. The Carrier further notes that past bargaining history and discussions support its position.

The Board carefully considered this issue. We are not persuaded by the Organization's arguments that the language of the Agreement between the parties was negotiated to provide the right of BRS-represented employees to accept the provisions of hourly pay provided to IBEW-represented employees before the Implementation. While we note that the Organization refutes the Carrier's position with regard to Section 4A, supra, arguing that the compensation was only meant "to protect the BRS-represented employees who move from monthly rates to hourly rates so that they would not lose money in the conversion," it appears much more than that. It is clear that this issue had been discussed and considered on the property with regard to its applicability and impact.

We find no history from 1986 to this present case where any BRS-represented employee attempted to utilize this provision. The Board further finds no instance where the Organization refuted the negotiating history presented by the Carrier. As per the two examples the Carrier cited:

> ". . . in last summer's first joint meeting between the BRS, the IBEW and the Carrier to review the Telecommunications Agreement, you took the position that the Claimant had the right to give up his BRS monthly rate and become hourly rated employee. It was your

> **General Chairman, Mr. John McArthur, that pointed out to you that the Carrier was correct in reliance on the specific terms of Section 4.A. that retained BRS-represented employees on their BRS monthly rates - Mr. McArthur noted Section 4.A. contains the mandatory term *shall*. . . .**
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> **. . . I note that during the negotiations of the Implementing Agreement, former BRS General Chairman Anousakes initially discussed with General Director Dan Moresette the possibility of converting BRS represented monthly-rated employees to hourly rates of pay similar to the '86 Side Letter, but those discussions ceased when Mr. Anousakes realized that such employees would be assigned the lower IBEW hourly rate."**

The Organization failed to prove that the language herein considered supports the interpretation it argues. There is no history to support its position in either negotiation or claims. There is no evidence presented by the Organization to demonstrate that the employee's decision to request a change from monthly to hourly pay rates is consistent with any past record of application, dispute, or history. A full reading of the Implementing Agreement demonstrates that certain parts of the former BRS Agreement would be maintained and certain parts changed. Nowhere has the Organization proven that the IBEW pay rates were ever made applicable to Signalmen by agreement between the parties. No explicit language ever states that BRS-represented employees by Implementing Agreement are entitled to the applicability of IBEW pay rates. Section 1B is not explicit in and of itself to provide BRS-represented employees the right to select Option 2 of Section 3.

In short, the evidence is lacking to persuade the Board that the overall Agreements in dispute provide BRS-represented employees the right to apply IBEW rates of pay. As such, the Board does not find the Carrier's actions violated the Agreement. The claim 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 30th day of January 2006.