

PUBLIC LAW BOARD NO. 4426

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.
"Carrier"

Award No. 14

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) Carrier violated Rule 21, Overtime, of the Scheduled Agreement between the Brotherhood of Maintenance of Way Employees and the Central Vermont Railway effective January 21, 1989, when it failed to properly compensate Claimant S. Wing for double time, as required.

(b) Carrier should now compensate Claimant an additional 8 hours at Foreman's straight time rate of pay as originally requested and as required by the Rule.

OPINION OF THE BOARD

The basic facts are not in dispute. On August 8 and 9, 1990 Claimant worked around the clock. He began work at 0600 on August 8 and worked continuously until 2200 on August 9, 1990. This included Claimant working through his normal shift of 0700 - 1530 on August 9. Claimant subsequently filed a claim for compensation during this period, including double time for work during his normal shift of 0700 - 1530 on August 9. Carrier's payroll department amended Claimant's payroll sheet so as to

compensate him straight time for the period between 0700 - 1530 on August 9. The instant claim was therefore filed on Claimant's behalf concerning whether under the Agreement Claimant should have been compensated at the straight time or double time rate during this period.

Rule 21 is relevant to this case and states in pertinent part as follows:

Time worked preceding or following and continuous a regularly assigned eight hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from the starting time of the employees regular shift. Time worked in excess of twenty-four hours continuous with the regularly assigned eight hour work period shall be paid for at double time rates.

The Organization contends that pursuant to the clear and unambiguous language of Rule 21 the Claimant was entitled to receive the double time rate for his regular shift on August 9. More specifically, the Organization argues that as of the start of this shift Claimant was working in excess of twenty-four hours and that this work was continuous with his regularly assigned eight hour work period which began on August 8. The Organization further contends that Rule 21 is clear and unambiguous in stating that "time worked in excess of twenty-four hours continuous with the regularly assigned eight hour work period shall be paid for at the double time rate", and that it is well settled through precedent that in light of such clear and unambiguous Contract language past practice cannot prevail and abandoned claims have no precedential value. Moreover, the

Organization argues that there has never been a "letter of interpretation" agreed to by the Organization, nor signed by anyone from the Organization, concerning the application of Rule 21. Finally, the Organization notes that when the parties' Agreement in 1989 was updated no "letter of interpretation" was incorporated within that Agreement.

The Carrier contends that there is a long-standing past practice which is controlling in this case. More specifically, Carrier contends that the language of Rule 21 in the instant Agreement, as well as in predecessor Agreements dating back to at least 1944, has been interpreted and applied by Carrier in the manner done in this case. Moreover, Carrier maintains that on numerous occasions throughout the years the Organization has acquiesced in this interpretation. Finally, the Carrier contends that a "letter of interpretation" from an Organization official in or around 1969 makes clear that the Organization itself agreed with Carrier that this was the proper interpretation and application of the Rule.

The Board has determined that the claim must be denied.

The Board recognizes that the Organization has made a thorough and forceful argument in support of its position. Nonetheless, not even the Organization's well reasoned argument can alter several critical considerations in this case.

First, the Board concludes that there is arguable ambiguity in the relevant language of Rule 21. While standing alone, this language certainly could be interpreted in the manner urged by

the Organization. It also, however, could reasonably be construed in the manner urged by the Carrier. Nowhere in the Rule does it expressly state that time and one-half or double time is to be paid for a regular work shift. The sentence of Rule 21 stating that "[t]ime worked in excess of twenty-four hours continuous with the regularly assigned eight hour work period shall be paid for at double time rates" therefore could arguably be intended to apply to double time being paid only for time worked that did not involve a regular work shift. In addition, if the intent of the parties was that double time be paid for all hours worked after sixteen continuous hours of work from the starting time of the employee's regular shift, regardless of whether that time included a second regular shift, the parties could have easily stated that without inclusion of a sentence concerning what is to occur after expiration of 24 hours. That the Rule was written in its current form, however, gives some indication that the extra wording was intended to provide an additional meaning, perhaps that now urged by Carrier. In sum, for all of these reasons ambiguity exists in the language of Rule 21 insofar as it is applicable to this case.

Second, the Board notes that the Carrier has made a strong argument that in 1969, long before current leadership took office, the Organization expressly agreed with the interpretation of Rule 21 here urged by Carrier. While it is true that the document which purports to contain this agreement of the Organization is not signed by an Organization official, a

careful reading of contemporaneous correspondence from 1969 and subsequent years strongly indicates that the document in question was in fact authored by an Organization official.

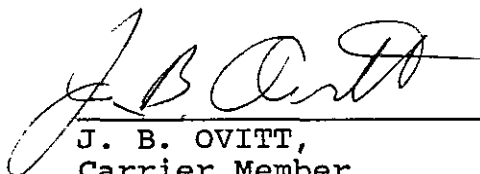
In these circumstances, the Board concludes that past practice must be controlling. In this regard, it is undisputed that for many years the relevant language of Rule 21 has remained unchanged, and the Rule has been consistently interpreted and applied by Carrier in the manner done in this case. There exists ample Third Division precedent that in this situation it would be inequitable and improper for the Board to now impose a different interpretation.

AWARD

Claim denied.



B. A. WINTER,
Organization Member



J. B. OVITT,
Carrier Member



S. E. BUCHHEIT,
Neutral Member