

PUBLIC LAW BOARD NO. 2766

AWARD NO. 1

CASE NO. 1

Parties : International Brotherhood of Electrical Workers
to the : and
Dispute : Missouri Pacific Railroad Company

Question

at Issue Under the August 1, 1977, agreement, under what conditions shall a communications maintainer receive time and one-half over and above the monthly rate?

After conducting hearings on the record of thirty cases and a review of all the evidence, the board finds the following: (1) the parties herein are a carrier and employees within the meaning of the Railway Labor Act, as amended; (2) the board is duly constituted by agreement dated July 21, 1980; (3) the board has jurisdiction over the parties and the subject matter; and (4) the parties were given due notice of the hearings held.

BACKGROUND OF THE DISPUTE

Prior to August 1, 1977, the class of employees involved in this dispute were identified as telephone maintainers. They were covered by the agreement dated June 1, 1960, between System Federation No. 2, Railway Employees Department, AFL-CIO (composed of several shop crafts, including the IBEW) and the Missouri

-2-

Pacific Railroad Company. Rule 107 (c) of that agreement was applicable to telephone maintainers. That rule reads in pertinent part as follows:

ELECTRICAL

WORKERS

CLASSIFICATION

OF WORK:

RULE 107 * * * *

(c) (Western and Southern Districts only.)

Telephone maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday if possible. Rules applicable to the classification of electrician shall apply to service for monthly rate telephone maintainers on their assigned rest day. Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. The straight time hourly rate for such employes shall be determined by dividing the monthly rate by 213 hours. Further wage adjustments, so long as monthly rates remain in effect, shall be made on the basis of 213 hours per month. Except as specifically provided in this paragraph (c), the rules applicable to monthly rated telephone maintainers prior to September 1, 1949, shall continue without change.

Rule 107 (c) covered telephone maintainers for pay purposes, including overtime pay provisions, for work performed on rest days. It also clearly stated that ordinary construction or maintenance work would not be required on the sixth day of the work week. Under this rule, monthly paid telephone maintainers

-3-

were required to respond to trouble calls any time during the six day work week and the monthly rate of pay covered all such calls.

In September 1970, the organization served carrier with a Section 6 notice on behalf of telephone maintainers seeking their own agreement. After several years of negotiations and with the help of mediation, an agreement was reached. That agreement has an effective date of August 1, 1977, and is entitled:

Communication Agreement between the

Missouri Pacific Railroad Co.

and

International Brotherhood of Electrical Workers

The employees covered under this agreement are all communication maintainers in the employ of the Missouri Pacific Railroad.

Rules of the August 1, 1977, agreement pertinent to this dispute are listed below:

RULE 3. MONTHLY RATED EMPLOYEES

Communication Maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday, if possible. Ordinary maintenance or construction not heretofore required on Sunday will not be required on the sixth day of the work week. The straight time hourly rate shall be determined by dividing the monthly rate by 213 hours.

-4-

Monthly rated communications maintainers will be paid time and one-half rate for ordinary maintenance or construction work on the sixth day of their work week and for all work performed on their rest day.

Positions for monthly rated communications maintainers will have assigned territories. Monthly rated communications maintainers will be paid at the time and one-half rate in addition to their monthly rate for ordinary maintenance or construction outside their normally bulletined hours and for all services rendered off their assigned territories outside their normally bulletined hours.

RULE 4. HOURS OF SERVICE AND WORK WEEK

Section 1. Hours of Service

- (a) Eight hours of service shall constitute a day's work.

RULE 5. SHIFTS

- (a) Where but one shift is employed unless otherwise provided for, the starting time will not be earlier than 7:00 o'clock nor later than 8:00 o'clock, a.m. or p.m.

RULE 6. OVERTIME

All overtime continuous with regular bulletined hours will be paid for at rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

RULE 7. OVERTIME AND CALLS

- (a) For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour.

-5-

- (d) Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two hours and forty minutes (2:40") or less and will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement.
- (g) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or where days off are being accumulated under paragraph (g) of Section 2 of Rule 4.

At the conclusion of the first meeting of this board, it was clear that the dispute involved here encompassed a number of elements that had to be handled separately.

Thirty individual claims alleging a violation of Rule 3 of the August 1, 1977, agreement were presented. In the interest of sound labor relations and with the aim of seeking a practical approach to a complex problem, it was agreed that the board would first interpret the meaning of Rule 3. It would then review and decide each claim separately, in light of its interpretation of Rule 3.

-6-

POSITION OF THE PARTIES

The organization contends that under the August 1, 1977, agreement, communication maintainers are entitled to time and one-half pay for all time worked outside their bulletined hours and all time worked on the sixth day of the work week and on their rest days. The organization supports this position by arguing that the controlling agreement covers only communications maintainers and that all terms of the agreement apply to covered employees.. It further contends that specific rules of the agreement--Rule 4, 1(a), Rule 5(a), Rule 6(a), and Rule 7(a),(d), and (g)-- clearly support the argument that time and one-half will be paid for all work performed beyond bulletined hours and for all work performed beyond 40 hours in a week. All rules in the agreement pertaining to pay apply to communications maintainers, not just Rule 3.

Carrier, on the other hand, contends that communications maintainers are monthly rated employees and that Rule 3 of the August 1, 1977, agreement very clearly specifies that communications maintainers are paid a monthly rate for all services rendered. It also specifies under what conditions communications maintainers will be paid overtime. Carrier also argues that Rule 6(a) and Rule 7(a),(d), and (g) do not apply, since Rule 3 was written

- 7 -

specifically to cover overtime situations for monthly rated employees. The other rules were placed in the agreement to cover hourly paid employees when and if they were hired.

Carrier's position, briefly stated, is that communications maintainers are paid overtime pay for work performed on the rest day, for ordinary maintenance and construction work performed on the sixth day, ordinary maintenance and construction work performed outside normally bulletined hours, and for all work performed off assigned territory outside normally bulletined hours. All other work required of communications maintainers is covered under the monthly rate. Carrier claims that communications maintainers are paid the monthly rate to assure that they will be available to respond to trouble calls after hours and on the sixth day. Rule 3 makes no allowance for overtime pay for such trouble calls. They are covered under the monthly rate.

OPINION OF THE BOARD

It is the opinion of this board that when the August 1, 1977, agreement is compared to the previous shop craft agreement, it is clear that the latter agreement expanded the rights of communications maintainers. It did not, however, go so far as to require overtime pay for all trouble calls outside of bulletined hours and on the sixth day, as the organization maintains in these proceedings.

-8-

The interpretation given by carrier to Rule 3 is the correct one. This language is very precise and specific. It is clearly understood in the railroad industry and has been interpreted in numerous awards both on and off this property. Rule 3 states that communications maintainers will be paid a monthly rate to cover all services rendered. If that phrase stood alone in the agreement, one could reasonably conclude that the parties had agreed that for a monthly rate of pay, carrier could call on the employe to perform a service at any time of the day or night or on any day of the week and be responsible for ^{the work at} no extra pay. The parties to this agreement, however, did not intend to have such an unreasonable arrangement, so they wrote into the rule certain exceptions.

They specified one rest day per week. They agreed that ordinary maintenance or construction work would not be required on the sixth day. They indicated that communications maintainers would be paid time and one-half for all work on their rest day and for all ordinary maintenance or construction work performed after bulletined hours and on the sixth day. They specified that maintainers would be assigned a territory and would be paid time and one-half for all services rendered outside of normally bulletined hours off their territory. They did not specify any other conditions under which a communications maintainer would be paid time and one-half.

-9-

It is a generally accepted principal in labor relations that the parties to an agreement are fully aware of what they have agreed to. If they go to the trouble to list specifics in a contract clause, it can be concluded that all possibilities were considered and only those agreed to were listed.

It appears to this board that that is precisely what took place in the negotiations leading up to the August 1, 1977, agreement. The organization sought expanded coverage of overtime for communications maintainers over what it had under Rule 107(c) of the shop craft agreement. It was successful in that attempt. It clarified the rule in regard to overtime pay for ordinary maintenance and construction on the sixth day. It was successful in adding overtime pay for ordinary maintenance and construction outside bulletined hours and for all work performed off territory outside of normally bulletined hours.

The organization made significant gains in this round of bargaining. It cannot be concluded, however, from the wording of Rule 3 or from the record of these proceedings that the parties agreed to or intended to agree to: pay monthly rated employees overtime for all time worked outside of normally bulletined hours or on the sixth day. We see no basis on which to conclude that legitimate trouble calls are not covered under the monthly rate.

-10-

While the board agrees with the carrier's interpretation that Rule 3 does not require that maintainers be paid for trouble calls outside of the bulletined hours on the first six days of the work week, this board does not agree that carrier can require work after the regular bulletined hours purely on whim. Both sides have presented awards to support their respective positions in this case. A careful review of those awards reveals that in each case, the referee noted that some element of emergency or an extraordinary, unusual situation must exist in order to justify calling a monthly paid employe to perform work outside his bulletined hours and on the sixth day.

In Second Division Award 4481, submitted by carrier, Referee Seidenberg stated, "the division finds it a more logical and reasonable construction to hold that the Rule means that regular employe paid on a monthly basis are required in order to earn that monthly rate, among other things, to stand by and be available to perform emergency and extraordinary work on the sixth day of the work week."

In Second Division Award 7039, Referee R.M. O'Brien also spoke to the need for work to be of an urgent or unusual nature in order to require a monthly paid employe to work on the sixth day. This board has adopted such a position and will apply it as we review and decide each case before us.

-11-

This dispute settles on the issue of whether it is was necessary to call a maintainer in each of the situations cited. While the organization takes the position that the monthly rate does not cover payment for overtime work, but only for holidays and the standby day, it also argues in the majority of the cases before this board that the work performed by claimants was in the nature of ordinary maintenance and no real emergency situation was present.

The issue of what does or does not constitute ordinary maintenance and whether it is consistent with what carrier characterizes as a trouble call is not the paramount issue before this board, but it must be discussed in some detail in order to settle this dispute. Neither of the two extreme positions that emerge from this record (that a total emergency must exist to justify a call or that carrier can call a communications maintainer on the first six days of the work week, whether the call is necessary or not) is valid. It goes without saying that the rule of reason must be applied when either side exercises its rights in labor-management relations. Carrier cannot act in an arbitrary or capricious manner in calling communications maintainers. There must be some reasonable justification for such calls. The practice in the industry, long-standing relationships, and common sense will usually dictate what constitutes "reasonable" action.

-12-

The organization argues that Rules 6(a) and 7(a),(d), and (g) apply to monthly rated employees and that their pay should be figured accordingly. This board cannot agree. In handling this case on the property and in its presentation before this board, carrier stated that the organization requested that the terms of the shop craft agreement pertaining to hourly employees be carried forward and included in the August 1, 1977, agreement, in the event that carrier put on apprentices or construction crews who would be paid on an hourly basis. That statement by carrier has gone unrefuted throughout these proceedings.

This board is of the opinion that the parties to this agreement did not agree, by words or inference, to pay monthly rated communications maintainers a rate of pay considerably larger than comparable hourly rated people would receive and then also pay them time and one-half for all time worked, for whatever reason, outside of normally bulletined hours or on the standby day. If the parties had agreed to such an arrangement, it would have been so unusual that they could have and should have clearly so stated in the agreement. Since the agreement contains no clear statement to this effect, it can only be concluded that the parties intended to apply the term monthly rate for all services rendered in the August 1, 1977, agreement in the same manner that it had been applied for many years in the shop craft

-13-

agreement. Where they agreed to change its application, clear language was written into the agreement.

FINDINGS

As to the specific facts of Case No. 1, Maintainer Brown was called in on Saturday, March 25, 1978, his standby day, to determine why the base radio at North Little Rock could not be used. He found the trouble and disconnected a console. This allowed all other consoles on the network to perform properly. The faulty console was kept out of service over the weekend and was repaired by claimant during his normal working hours on Monday.

Carrier argues that this was a trouble call and, as such, was contemplated under the monthly rate. The organization argues that the work performed by claimant was ordinary maintenance and, therefore, under Rule 3, he should be paid time and one-half for the time spent.

It is the opinion of this board that the monthly rate covers such calls and that claimant is not entitled to additional compensation in this instance.

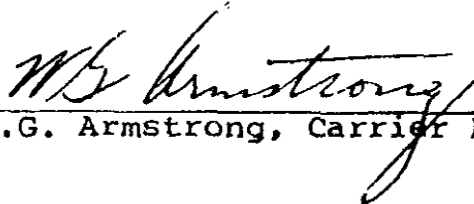
AWARD

The claim is denied per opinion of the board.

-14-



D.G. Davis, Employee Member



W.G. Armstrong, Carrier Member



R.E. Dennis, Chairman
and Neutral Member

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December 9, 1980