

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
MICHIGAN CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: "(a) Claim that the Carrier violated the agreement when they refused to allow Signal Maintainer R. Couch to fill the position assigned to him at Beaubien Street Interlocker until such time as he provided himself with a means of call as arbitrarily established by the management.

"(b) Claim that Signal Maintainer R. Couch be reimbursed for the installation and rental of his telephone since February, 1937."

EMPLOYEES' STATEMENT OF FACTS: "Signal Maintainer Couch has worked in the Signal Department continuously since April 7, 1913. He was first employed as a Helper and in due time was promoted to Assistant Signalman, Signalman and Leading Signalman. On account of the drastic force reductions, resulting from the depression, Couch was required to exercise his seniority privileges and has since 1930 been working, as a Signal Maintainer, at the West Bound hump car retarder, which is located within the city limits of Detroit.

"Early in January, 1937, another Signal Maintainer's position, with headquarters at Beaubien Street Interlocker and located within the city limits of Detroit, became vacant. It was advertised for seniority choice January 7 and Couch was the successful bidder. He was assigned to the job by bulletin January 29.

"Couch was told by his superior officers that they would not transfer him to the job to which he had been assigned until he made himself 'available for call.' He was advised verbally that 'available for call' meant locating his residence close to Beaubien Street Interlocker or installing a telephone in his home.

"Signal Maintainer Couch is living in his own home, which he is buying on the installment plan, and which is located within the city limits of Detroit. He has resided at this same address for the past several years.

"For many years the Carrier maintained the telephones of certain employees held subject to call, but discontinued this allowance during the early period of the depression without conferring with the employees or making any other arrangements for calling such employees.

"Couch was actually transferred to and allowed to start work on his new assignment February 13, after he had installed a telephone in his residence."

POSITION OF EMPLOYEES: "That Signal Maintainer Couch should have been assigned to the position at Beaubien Street Interlocker immediately upon his being awarded the job by bulletin, regardless of whether he resided

"This letter has never been superseded or canceled. It is in full force and effect today.

"Where the Management feels that it is necessary to require an employee in the Signal Department to have a telephone, the expense is assumed by the Management. This condition obtains at three points on this railroad today.

"Because of the delay in permitting Mr. Couch to assume the duties at Beaubien Street, it is our opinion that the employees, having failed to obtain through negotiations a rule requiring the carrier to assume the expense of telephones in the residences of signal maintainers, hoped to obtain an Award in this dispute which will in effect be such a rule, even though the installation of the facility is not a requirement of the carrier nor a prerequisite to obtaining an advertised vacancy.

"Mr. Doble's appeal from Signal Engineer Mock was denied by the Management and thereafter the case was progressed in the regular way to its present status.

"The Management declined to join with the employees because it felt the Board has no jurisdiction.

"The Board is only authorized to consider disputes growing out of grievances or out of the interpretation or application of agreements.

"Whatever grievance Mr. Couch might have had was definitely disposed of on February 6, 1937, when he was informed by the supervisor that he might take the position in question at his own convenience.

"He suffered no wage loss by this delay as he had been holding a regular position carrying the same rate as the one for which he had applied. The position he was holding was assigned six days a week. The position at Beaubien Street was assigned for only five days a week.

"He was not told by the Management that having a telephone in his residence was a prerequisite to his taking the position.

"There is no rule or agreement dealing with the subject of telephones in the residences of signal forces other than the decision of Vice President Shearer made on August 1, 1934, in response to the request of General Chairman Pattee.

"That decision is clear and definitely states that having a telephone is not a prerequisite to taking over the duties of a signal maintainer's position.

"If the Third Division decides to assume jurisdiction in this dispute, this carrier urges that the claim be denied as it is not covered by the rules of the agreement, is not supported by the record and is entirely without merit."

There is in existence an agreement between the parties bearing effective date of Feb. 1st, 1923.

OPINION OF BOARD: Petitioner in this case was the successful bidder to a vacancy in a signal maintainer's position at Beaubien Street Interlocker, Detroit, Michigan. There was some delay in assigning claimant to the position which resulted in this claim being filed.

Petitioner alleges that carrier refused to place him on the position until he provided himself with a telephone so he would be available for call. The record shows that claimant was placed on the position within a few days after he bid in the position and that he actually suffered no loss by reason of the delay. This part of the claim (Paragraph a) is therefore moot and will be dismissed.

Believing the delay in assigning him to the position was due to the fact he had no telephone so as to make himself available for call, petitioner pro-

vided himself with one and paragraph (b) of the claim is for reimbursement for the cost of installation and rental since February, 1937.

There is some conflict in the evidence as to what was said to the employe as to the necessity for him to have a telephone but this conflict is entirely immaterial and irrelevant under the facts in this case. Had the dispute involved the question as to whether carrier directed employe to install a telephone, what was said to the employe would be of importance. However, the claim is that carrier refused to assign employe to the position until such time as he provided himself with a telephone—not that he was directed to install one.

There is no disagreement between the parties as to the fact that the prevailing agreement does not require employes of the Signal Department to provide themselves with telephones so as to be available for call. It was, therefore, unnecessary for claimant to install a telephone. The rights of the parties are controlled by terms of the prevailing agreement and in the absence of a showing that claimant was directed by carrier to install a telephone, this Board is powerless to grant the relief requested under Paragraph (b) of the claim. The claim as presented bars consideration of the allegation of duress.

Claim (b) will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That no violation of agreement is shown.

AWARD

Claim (a) dismissed and Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of July, 1939.