

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Erie Railroad, that:

(a) Under the proper application of the Signalmen's Agreement an Assistant Signalman or an Assistant Signal Maintainer in training for position of Signalman or Signal Maintainer must work with and receive such training under the direction of a Signalman or Signal Maintainer.

(b) The Carrier violated and continues to violate Rule 5, Article 1, and other rules of the current Signalmen's Agreement bearing effective date of June 1, 1944, when prior and subsequent to October 6, 1948, it used Assistant Signalmen to work in Signal Megger Gangs under the direct supervision of Leading Signalmen Earl White and S. Smith, working in or near Paterson and Jersey City, N. J., respectively.

(c) Proper Mechanic's rate of pay be paid to the Assistant Signalmen who were used to work directly under the supervision of Leading Signalmen in Megger Gangs to perform Mechanic's work since the effective date of this claim, namely, October 6, 1948, and continuing until corrected by the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Rule 5 provides that employees classified as Assistant Signalmen and Assistant Signal Maintainers are in training for positions of Signalmen or Signal Maintainers and while receiving such training must work with and under the direction of a Signalman or Signal Maintainer. For the sake of brevity, Assistant Signalmen and Assistant Signal Maintainers will be referred to as Assistants.

Contrary to generally recognized practices and the provisions of the current agreement, the Carrier has required Assistants to work with and under the direction of a Leading Signalman. While these Assistants are so used, they perform among other things, the usual duties performed by Signalmen and Signal Maintainers as prescribed in the "Note" appended to Rule 5 of the current agreement.

Also, while these Assistants work with the Leading Signalman as comprehended in this claim, there are no Signalmen or Signal Maintainers working with the Leading Signalmen.

Part (a) of this claim parallels a claim submitted to this Board under date of November 20, 1947, and it upheld the position of the Brotherhood in Award No. 3956, Docket SG-3962, dated June 30, 1948.

3. Rule 3 provides for Leading Signalman to work with and to direct the work of other employees specified herein and does not restrict or limit his work with only signalmen and signal maintainers.

4. The signalman receiving the differential is just as much a signalman as a man receiving the standard rate and performs signalmen's work.

5. The condition of having assistant signalmen and assistant Maintainers work with signalmen and signal maintainers receiving the leaders rate existed at the time agreements between the parties were negotiated and has continued throughout the various agreements without change.

6. The assistant signalman is performing assistant signalmen's work under the direction of a signalman working as a signalman receiving a higher rate than signalman's rate.

7. The assistant signalman is not entitled to signalman's rate for service performed because he is an apprentice, and is paid the rate scale provided in the agreement.

8. Award No. 3956 is not controlling because it was based upon a rule, facts and circumstance not present in this dispute.

All data contained herein has been discussed with or is known by the employees. (Exhibits not reproduced.)

OPINION OF BOARD: The General Committee bases this claim on Carrier's alleged violation of Rule 5 of Article 1 of the parties' effective Agreement. The alleged violation is based on the contention that Carrier used Assistant Signalmen to work in its Signal Megger Gangs directly under the supervision of a Leading Signalman. It asks, without naming them individually, that the Assistant Signalmen used to work directly under the supervision of Leading Signalmen Earl White and S. Smith of Megger Gangs near Paterson and Jersey City, N. J., be paid at Mechanics' rate of pay for all time so worked since October 6, 1948.

A Megger is an instrument used to test the signal wires, cables and equipment of the signal system. The record shows Carrier established two-men gangs to use this instrument, and ground testing devices, for that purpose and called the headman thereof a "Meggerman". This so-called "Meggerman", a classification not contained in the parties' Agreement, is in fact a Leading Signalman receiving pay as such. He is in charge of the gang. Immediately under him, and in fact the only other man in such gang, is an Assistant Signalman.

A Leading Signalman is classified by Rule 3 of Article 1 of the parties' Agreement as: "An employee assigned to work with and direct the work of other employees specified herein . . ." Ordinarily this rule would give Leading Signalmen the right to direct the work of Assistant Signalmen as they are other employees specified herein. See Rule 5 of Article 1.

However, Rule 5 classifies an Assistant Signalman as: "An employee in training for a position of signalman working under the direction of (but not at all times with) a signalman or signal maintainer . . ." This Division has construed this rule to mean ". . . . that an assistant signalman must be working under the direction of a signalman or signal maintainer to be classified as an assistant. . . . In other words, an assistant must get his training from a signalman or signal maintainer. . . . the manner of doing the work must be under the direction of a signalman or signal maintainer under the plain meaning of this rule." See Award 3956.

We think this language correctly construes Rule 5. Rule 5 is a special rule relating to Assistant Signalmen and Assistant Signal Maintainers. It

contains no exception. It is controlling over Rule 3 as far as Assistant Signalmen and Assistant Signal Maintainers are concerned because the latter rule is only general in character. What Carrier did was in violation of Rule 5.

Rule 61 of Article 7 of the parties' Agreement provides:

"In handling of disputes which may involve money payments, such claims shall not extend behind a period of ninety (90) days prior to the date claim is filed."

Claim here was made on January 3, 1949 and sought relief back to October 6, 1948. This was within a period of ninety days from the claim and clearly within the rule.

Reference is made to the form of the claim, that is, that it does not name the individual parties for whom compensation is sought. Rule 61 does not specifically so require but permits any "grievance" to be filed by "his duly accredited representative." Under the situation here the following from Award 4821 of this Division is applicable:

"We think the correct procedure is to permit the filing of general claims where the question at issue operates uniformly upon a class of employees that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an Agreement ought not to be made unnecessarily difficult by requiring the filing of a multitude of claims when the disposition of a single issue decides them all. The Organization is authorized to represent the employees and where no prejudice arises out of group handling, we think it is entirely proper."

Much is said of past practice and laches as they relate to the claim here made. When the involved rules, as here, are clear and unambiguous the applicable rule is that long existing practices do not change them, even though the organization may have acquiesced therein. It is only when rules are ambiguous and uncertain that past practice may be controlling thereof. If clear and certain the Organization can require the Carrier to comply therewith at any time but the failure to take action sooner may preclude any claim for compensation for such violation that relates thereto at any time prior to the request for its proper application. This would be true although the same rule was renegotiated while the practice existed for the express provisions of the Agreement would abrogate the practice at any time request for its proper application is made. See Award 6144 of this Division.

As stated in Award 2576 of this Division:

"But repeated violations of an express rule by one party or acquiescence on the part of the other will not affect the interpretation or application of a rule with respect to its future operation."

The Claimants performed work which, under the circumstances here presented, should have been performed by employees coming within the classification of Rule 4 of Article 1 and should have been paid accordingly. See Rule 22 of Article 2. Each Claimant should have been paid at the rate of a mechanic for the service he performed on these Megger gangs. The claim is sustained from October 6, 1948 for the difference between what the Claimants should have received and what they actually did receive while working on these gangs.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1953.