

Award No. 12302
Docket No. SG-11798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN RAILWAY COMPANY,
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY,
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY,
NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY,
THE NEW ORLEANS TERMINAL COMPANY,
GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY,
ST. JOHNS RIVER TERMINAL COMPANY,
HARRIMAN AND NORTHEASTERN RAILROAD COMPANY.**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

(a) The Carrier violated the Cooks' Agreement, effective August 16, 1956, when it failed to assign cooks to signal gangs in accordance with that agreement and Rule 54 of the Signalmen's Agreement.

(b) Mr. J. T. McWhorter (if not employed) and Mr. G. D. Packer (if not employed) and/or Mr. D. Selby, in the order named, be compensated at the respective cook's monthly rate of pay, effective 60 days prior to the date and receipt of this claim, for all time not permitted to work during the time that the signal gangs are assigned and working without camp cars and a cook. The number of cooks involved is the number of signal gangs involved.

(c) Mr. B. B. Woodward (if not employed) and/or Mr. W. M. Scott, (if not employed) or Mr. R. Price, in the order named, be compensated at the respective cook's monthly rate of pay, from January 12, 1959, or date signal gang without camp cars and a cook was established and began work at Sevier Yard, Tenn., as shown on award bulletin No. 529 dated January 5, 1959, for all time not permitted to work in accordance with the agreement provisions.

(d) Claim to continue from effective date and thereafter so long as any

signal gang is established and assigned without camp cars and a cook and working on the seniority districts where the above named cooks hold seniority and other employment rights. [Carrier's File: SG-13059]

EMPLOYES' STATEMENT OF FACTS: For many years, prior to and following the 1948 revisions to the Signalmen's Agreement, the Carrier provided camp cars and cooks for all signal gangs established, except for the gangs in the relay shops. The Signalmen's Agreement, revised effective February 16, 1948, provides, among other things, that the present practice with respect to furnishing camp cars be continued and that the cook shall, as in the past, be provided and paid by the company.

During 1956 the Carrier established two signal gangs for which it did not furnish camp cars or cooks, and the Brotherhood initiated claims, on behalf of the employees of those signal gangs, which were subsequently progressed to this Board and assigned Docket Nos. SG-9709 and SG-9710.

On July 26, 1956, the parties to the instant dispute entered into an agreement, effective August 16, 1956, governing the hours of service, working conditions, and rates of pay of cooks employed in the Signal and Electrical Department. Hereinafter, we will refer to that agreement as the Cooks' Agreement.

The dispute involved herein is a combination of two claims that originated on separate seniority districts but which were combined by the General Chairman in his appeal to the Assistant Director of Labor Relations as they are similar and involve the same agreement provisions. These claims are on behalf of cooks on furlough because the Carrier did not continue the practice with respect to furnishing camp cars.

In connection with the claim that arose on the Lines West seniority district, Mr. E. C. Melton, General Chairman, presented the following claim, dated January 15, 1959, to Mr. L. C. Brown, Signal and Electrical Superintendent:

"Our records indicate that you have certain cooks cut-off and furloughed in the signal department, with signal gangs established and assigned without camp cars and a cook.

The cook's agreement, effective August 16, 1956, provides that vacancies and new positions are to be shown on bulletin and assigned in the order of seniority, as provided for in that agreement. Also Rule 54 of the current Signalmen's Agreement has a provision that 'The cook shall, as in the past, be provided and paid by the Company and shall be subject to the direction of the man in charge of the gang.' This provision indicates that all signal gangs are to have a cook, and, the cook's agreement is being violated when cooks are not assigned in accordance with the agreement.

We find that in seniority order that Messrs. J. T. McWhorter; G. D. Packer; and D. Selby, cooks are now furloughed and being deprived of a right to work, or bid on a position that should have been established and assigned in the signal gangs now working at Inman Yard, Atlanta, Ga., and Fair Street Interlocking Plant, Atlanta, Ga., where a Foreman and other signal employees have been assigned as a gang without camp cars and a cook. Therefore, please accept the following as a claim on behalf of the senior cut-off and furloughed cooks, in the order listed:

(1) For the number of hours for which the gang receives overtime at punitive rate;

(2) Paragraph (1) shall not apply: (a) when the gang is making up time during the work week to secure week end leave; or (b) when the gang stops for supper in the evening at or before the usual hour and returns to work after supper, making overtime. This exception (b) does not apply if the cook should serve a second evening meal after the gang finally knocks off work."

(The monthly rate effective November 1, 1959 is \$355.42.)

Rule 1 of the Cooks' Agreement does nothing more than the language indicates. It governs the hours of service, working conditions and rates of pay of cooks employed in the Signal and Electrical Department. Obviously, it cannot have any application unless and until cooks are employed. It does not obligate the railway companies to employ cooks to prepare meals for signal forces with fixed headquarters.

The claim and demand which the Brotherhood here attempts to assert concedes that the claimants may have been laid off; in fact, they were cut off at various intervals. Carriers' obligation under Rule 8 (c) is to recall cooks "only to fill a permanent position, expected to last sixty (60) or more working days." No such positions have existed when men are assigned fixed headquarters. The Carriers had no contractual obligation to recall cooks when, in fact, no positions were in existence.

Rule 12 clearly indicates that cooks are to be employed only when camp car outfits (camp cars) are furnished signal forces with no fixed headquarters. This is evidenced not only by the language of the third paragraph, but by the language of the Note as well.

On the record, the Carriers have no contractual obligation to furnish camp cars as living quarters for signal forces assigned signal gangs with fixed headquarters, nor do the Carriers have any contractual obligation to signal forces or to cooks to employ cooks to prepare meals for employees in such gangs. The evidence is also conclusive that the cooks under the terms of their agreement have no contract right to employment and that the agreement applies only in situations where the management, in the exercise of its managerial prerogatives, elects to employ cooks to prepare meals for signal gangs assigned to live in camp cars. Furthermore, the Cooks' Agreement clearly indicates that cooks are to be employed only when camp cars are furnished by the Carriers.

There not having been any violation of the Cooks' Agreement as alleged and the claim and demand here presented being without basis under such agreement, the Board cannot do other than make a denial award.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is based on the contention that the Carrier violated the Cook's Agreement when it failed to assign cooks to signal gangs in accordance with their agreement and Rule 54 of the Signalmen's Agreement.

We are of the opinion that the rules in the Cook's Agreement do not obligate the Carriers to employ cooks in signal gangs. Furthermore, we are

of the opinion that Rule 54 of the Signalmen's Agreement nor the awards of this Division provide for remedies to others than the parties to the agreement. Thus this Board does not have authority to extend coverage of the Signalmen's Agreement to cooks.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1964.