Award No. 18548
Docket No. SG-18687

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Ann Arbor Railroad Company.

On behalf of Signal Maintainers R. W. Morse, G. D. Harris, and all other Signal Maintainers on the Ann Arbor Railroad Company for reimbursement of the cost of noon meals eaten away from their respective home stations, commencing on or about December 20, 1968 and continuing until correction is made.

EMPLOYES' STATEMENT OF FACTS: Under date of May 16, 1968, Carrier issued a notice that effective immediately, signal maintainers will not be reimbursed for the noon meal while performing work in his regular assigned territory. That notice read:

"Dearborn, Michigan
May 16, 1968

TO ALL SIGNAL MAINTAINERS:

In connection with Rule 53 of the applicable Agreement between the Ann Arbor Railroad and Employes represented by the Brotherhood of Railroad Signalmen.

Effective immediately, signal maintainers will not be reimbursed for the noon meal while performing work in his regular assigned territory.

/s/ A. B. Swartzwelder
A. B. Swartzwelder
Superintendent
Signals & Communications"

Under date of May 22, 1968, Mr. Swartzwelder sent the following letter to Messrs. N. M. Suydam, C. F. Bernhard, D. E. McCoy, L. F. Garrett and R. W. Morse (signal employe):

"Referring to my letter dated May 16, 1968, in connection with Rule 53 of the applicable Agreement between the Ann Arbor Rail-

December 20, 1968. Subject allowances were made because of the Carrier's failure to comply with the time limit on claims rule and without in anyway prejudicing the Carrier's position relative to the merits of the claims.

The original bulletin of May 16, 1968 that is connected with the dispute at issue was amended by Mr. Swartzwelder in his letter dated May 22, 1968 along with reference to Rule 53. The bulletin of November 22, 1968 further amends those instructions to include Rules 21 and 22. Rule 53 was inadvertently referred to inasmuch as Rule 53 applies to monthly rated employes. The signalmen involved with the question at issue are hourly rated employes and as such are governed by the provisions of Rules 20, 21, and 22 as stated in Mr. Swartwelder's letter of November 22, 1968.

In 1963 The Ann Arbor Railroad Company was acquired by the Detroit, Toledo and Ironton Railroad Company. At the time The Ann Arbor Railroad was acquired, some signalmen working away from home stations were reimbursed for the cost of noon meals regardless of whether they returned to their home station daily or if they were required to remain away from home overnight. Under Detroit, Toledo and Ironton Railroad ownership, subject practice continued to May 16, 1968 when Superintendent Swartzwelder issued instructions to the effect that signalmen would no longer be reimbursed for noon meals on days they return to their home station. As previously stated, those instructions were amended on May 22, 1968 and on November 22, 1968.

Since the claims submitted prior to December 20, 1968 were paid account non-compliance with the time limit on claims rule, the dispute before the Board now deals with those claims subsequent to December 20, 1968.

(Exhibits not reproduced)

OPINION OF BOARD: Claimants are hourly rated Signal Maintainers. Under date of May 16, 1968, Carrier issued a notice that effective immediately signal maintainers will not be reimbursed for the noon meal while performing work in their regular assigned territory. Under date of May 22, 1968, Carrier changed this notice to read: "Signal Maintainers will not be reimbursed for the noon meal while performing work in the regularly assigned territory unless the nature of service does not permit him to leave and return to his home point the same day in which case the actual cost for lodging and meals will be fully reimbursed."

The Organization contends that Signal Maintainers of this Railroad had been reimbursed for noon meals taken away from their assigned home station at least since 1956, and that this past practice as well as the applicable Agreement precludes Carrier from taking the action it did by notice of May 16 and 22, 1968.

Carrier admits that it paid noon meals before but that was an error on their part; the applicable Agreement does not provide for payment of noon meals and since the pertinent Rules of the Agreement are clear and unambiguous, past practice cannot be relied upon.

With this contention of Carrier, we do not agree.

The Rules pertinent to this Claim, Rules 20, 21, and 22 are silent relative to the payment of noon meals for Signal Maintainers who were being used

away from their assigned home station although returning later on the same day. The Rules do not clearly and unambiguously preclude such payments as Carrier contends. Since the Agreement does not shed any light on the intent of the parties, we must ascertain his intent from past practice.

Carrier hes not refuted the Organization's allegation that the practice of paying for noon meals while employes were away from their assigned home station though returning later on in the day, has existed for at least twelve years. Rather, they claim it was an error on their part which can be terminated at will. We disagree. A past practice of at least twelve years duration clealy indicates the intent of the parties, absent any contractual prohibition. And since the Agreement is silent on this point, the past practice becomes the Rule. If Carrier desires to change this practice, it can seek to do so at the bargaining table. We are without power to do so. Consequently, we must sustain the claim.

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

That the parties waived oral hearing;

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.

CARRIER MEMBERS' DISSENT TO AWARD NO. 18548 — DOCKET NO. SG-18687

(Referee Robert M. O'Brien)

This Award is in palpable error and we dissent.

The referee states:

> "The Rules pertinent to this Claim, Rules 20, 21 and 22 are silent relative to the payment of noon meals for Signal Maintainers who were being used away from their assigned home station **although returning later on the same day** * * *." (Underscoring ours)

This is a completely erroneous statement. Rule 20 is the only rule which deals with employes who return to their home station daily and it makes no

provision for meals. Rule 21 in its entirety is predicated on hourly rated employes who do not return to home station on the same day and is clearly intended as a clarification of Rule 22, which deals with employes held out over night. We would also point out that the language of the last sentence of Rule 21 states:

> "Actual expenses will be allowed when away from home station if meals and lodging are not provided by the railroad." (Underscoring ours)

It is, therefore, obvious that the referee misinterpreted and misread the rules.

The referee goes on further to state:

> "And since the Agreement is silent on this point, the past practice becomes the Rule."

It is obvious when a rule is written it sets forth certain specific provisions and it cannot be contorted to mean something entirely different. Rule 20 does not contain provisions covering meals because it was not intended that meals would be provided. In its submission, the Carrier cited many Awards by eminent referees to the effect that past practices under a rule on a specific subject that is clear and unambiguous as is the case here, does not change the rule itself and either Carrier can enforce or employes can require the enforcement of such a rule according to its terms. In the handling of the dispute with the referee, numerous other Awards by equally eminent referees serving on different divisions of the Board were cited, to the effect that a practice having been continued as a unilateral and discretionary policy, may properly be modified or annulled by a Carrier at any time without incurring liability for rule violation. All of this precedent cited by and in behalf of the Carrier was simply ignored by the referee.

It has been held many times that an Award is no stronger than the logic that supports it. The referee abandoned logic, disregarded the agreement, and ignored the numerous precedent decisions upholding the action of the Carrier. On that basis, Award No. 18548 can have no precedenial value.

H. F. M. Braidwood

R. E. Black

P. C. Carter

W. B. Jones

G. L. Naylor

Answer to Carrier Members' Dissent to Award 18548, Docket SG-18687

The Minority Carrier Members persist in ignoring the fact that the rules of the parties' Agreement are silent on the subject of reimbursing the claimant employes for meal expenses in the circumstances involved in the subject dispute. The confronting case was not one in which the practice was contrary to the written rule and in which the practice, if enforced, would result in a

change of that rule. The practice as here enforced applies the parties' Agreement just as they themselves interpreted and applied it for years.

It is apparent from the tenor of the dissenters' statement that its primary purpose is to convince their principals that a diligent effort was made to persuade the Referee to support the respondent Carrier's position. We confirm that that was done.

W. W. Altus, Jr.
Labor Member

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.