NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20796

THIRD DIVISION Docket Number SC-20615

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

Claim No. 1':

(a) Carrier violated the current agreement between the Brotherhood of Railroad Signalmen and the Chicago and North Western Transportation Company when on October 24, 1972. overtime slips covering three hours Oct. 18, 1972; and one and one-half hours at the half time rate for Oct. 20, 1972; and on Oct. 31, 1972 overtime slips for two hours 15 minutes for October 24th and two hours 35 minutes for October 26, 1972 all at the half time rate were returned as unapproved by you.

(b) Carrier should now be required to allow these claims for a total of nine hours and twenty minutes at the half time rate, as presented to your office by Mr. Phillip Singletary.
/Carrier file: 79-8-100/

Claim No. 2:

(a) Overtime slip incorrectly dated as Sept. 30, 1972 for 1 hour 20 minutes at half-time rate, overtime slip incorrectly dated Sept. 31, 1972, for.1 hour and 55 minutes half the rate, and overtime slip dated Nov. 3, 1972 for 1 hour and 30 minutes at the half time leader signal maintainers rate were returned unapproved. The two dates listed incorrectly as pointed out in your denial as being in error should have read Oct. 30, 1972 and Oct. 31, 1972 respectively. These being returned by you Nw. 7, 1972 submitted by P. R. Singletary, leader and include Mr. T. K. Jameson as assistant.

(b) Overtime slip dated Nov. 13, 1972 for eight hours at the half-time leaders rate for Mr. Singletary, overtime slip dated Nov. 13, 1972 for one hour and 45 minutes at the half time rate leader signal maintainer Mr. Singletary and same amount of time for Mr. Robert Bethke at tho half time top rate assistant, overtime slip dated Nw. 15, 1972 for 3 hours 45 minutes each for Mr. Singletary and Mr. Bethke at their half time rates and overtime slip dated Nov. 16, 1972 for 3 hours 30 minutes each for Mr. Singletary and Mr. Bethke at their half time rates were returned by you on Nov. 22, 1972.

(c) Overtime slips dated Nov. 20, 1972 for 2 hours and 15 minutes at Mr. Singletary and Mr. Bethke's half time rate, and overtime slip dated Nov. 24, 1972 for 30 minutes at Mr. Singletary and hr. Bethke'a half time rate were returned unapproved by you on Nov. 27, 1972.

(d) Overtime slip dated Nov. 28, 1972 for Mr. Singletary for 2 hours and 15 min. at his half time rate were returned by you unapproved.

/Carrier file: 79-8-105/

Claim No. 3:

(a) Overtime slip dated Dec. 4, 1972 for one hour half time rate of Ldr. Signal maintainer P. R. Singletary and assistant signal maintainer R. D. Bethke covering time spent checking crossing protection at Mapleton and Ashippun, Wis., part of the Sussex, signal territory was returned unapproved by you; Dec. 11, 1972.

(b) Overtime slip dated Dec. 11, 1972 for six hours and twenty minutes at the half time rate of Ldr. Signal maintainer P. R. Singletary off his assigned territory account pot signal at Mercy at stop for 477's extra 974 was returned unapprwed by you; December 14,1972,

(c) Overtime slip dated Dec. 18, 1972 for one hour and thirty minutes at the half time rate of Ldr. Signal maintainer P. R. Singletary working off his assigned territory repairing wig wags at Ashippun, Wis. a part of the Sussex territory was returned unapproved by you on Dec. 26, 1972.

(d) Overtime slip dated Dec. 19, 1972 for three hours at the one half time rate of Ldr. Signal maintainer P. R. Singletary and assistant signal maintainer J. J. Krupela account of cutting brush under pole line east of Mapleton, Wis. on Sussex territory was returned by you unapproved on Dec. 26, 1972.

(e) Overtime slip dated Dec. 22, 1972 for one hour at the half time rate of Ldr. Signal maintainer P. R. Singletary account of checking crossing protection at Ashippun and Mapleton, Wis. a part of the Sussex territory was returned unapproved by you on Dec. 26, 1972.

(a) Overtime slips dated January 3, 1973 for 3 hours and 5 minutes half time rate. January 8, 1973 for 3 hours and 15 minutes half time rate. January 10, 1973 for 1 hour and 5 minutes half time rate. January 15, 1973 for 3 hours half time rate. January 16, 1973 for 2 hours and 15 minutes half time rate.

(b) January 17, 1973 for 3 hours and 15 minutes half time rate of Leader signal maintainer P. R. Singletary and assistant J. Krupela and over-time slip dated January 14, 1973 for 2 hours and 40 minutes at the half time rate of P. R. Singletary were returned by you as unapproved on January 19, 1973.

(a) Overtime slip for 2 hours and 45 minutes January 19, 1973 at the half time rate of P. R. Singletary and J. Krupela was returned unapproved by you on January 23, 1973.

(b) Carrier should now be required to compensate Mr. Singletary and Krupela at their respective half time rates for the time shown on above overtime slip. (Carrier file: 79-8-112)

OPINION OF BOARD: Carrier had a study made of its signal maintenance territories and, following the recommendations of its consultant, realigned the then existing Clyman Jct. and the then Sussex maintenance territories into a single territory. Characteristic sheets for the new territory were issued in accordance with Rule 42(b).

The claims are for periods during which Claimant performed service on a part of the combined maintenance territory which was not part of the Claimant's territory prior to the consolidation. Rule 20(a) prohibits assignments outside the territory, except in case of emergency as provided therein, and in such cases provides additional compensation. The Organization asserts that Carrier consolidated the territory in order to avoid the effect of Rule 20(a). A consolidation which was undertaken for that purpose, the Organization says, would violate Rule 76 which reads:

> 76. Established positions will not be discontinued snd new ones created under a different title covering relatively the same class of work, for the purpose of reducing rates of pay or evading application of these rules.

In order to prevail in its principal contention it is necessary, first, for the Organization to show that the change was made for one of the prohibited reasons, that is, reducing rates of pay or evading application of the rules. It is uncontroverted that Carrier engaged an outside consultant, and that it acted upon the basis of the recommendation of the consultant. The record is completely barren of any other facts bearing on Carrier's reason for making the consolidation. The Organization, with some force,

asserts that the reason Carrier made the consolidation was to avoid the application of Rule 20(a). Therefore* as the record stands on this question we have on the one hand au assertion or accusation of bad intent by the Organization and on the other hand the fact that Carrier did have an independent study made of the territories and that it acted upon the basis of the recommendation of the independent consultant. Obviously, the Organization must produce more than an assertion that Carrier acted for the purpose of evading the application of the Rules. It must introduce evidence of such a purpose and on the record before the Board it has failed to do so.

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

That the Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1975.

Dissent to Award 20796, Docket SG-20615
Award 20797, Docket SG-20616
Award 20802, Docket SG-20457
Award 20811, Docket SG-20611

The Majority in Awards 20796, 20797, 20802 and 20811 has erred.

The Parties' Agreement Rule 76 prohibits the execution by the Carrier of certain direct acts for the purpose of evading its rules. We established many years ago that we would not condone a Carrier'8 act.8 to accomplish indirectly that which it is prohibited from accomplishing directly. We have also established that, when one knows the inevitable outcome of a contemplated act, he must be considered to have committed the act with that Intent or purpose.

The confronting records establish that the Carrier did accomplish Indirectly that which is prohibited directly and that the Carrier must have known the inevitable outcome of its act. In fact, we believe the record clearly shows that such was the very reason for the Carrier engaging the "outside consulting firm"; certainly the reverse is not the case.

Awards 20796, 20797, 20802 and 20811 are in error and I dissent.

W. W. Altus, Jr.
Labor Member