

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20801  
Docket Number SG-20416

Dana G. Eischen, Referee

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

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

(a) On or about February 29, 1972, the Carrier violated the current Signalmen's Agreement when Leader Signal Maintainer J. F. Rairdin was not called to perform overtime work on his assigned territory, but instead Carrier called B.S. Williams, Signal Maintainer, who is under the direction of the above-named Leader.

(b) The Carrier now be required to compensate J. F. Rairdin at his overtime rate for all time consumed by B. S. Williams in performing the above work at Steamboat Rock, Ia., 5:45 P. M. to 9:45 P. M., February 29, 1972.  
/Carrier's Pile: 79-24-3/

**OPINION OF BOARD:** On claim date, Claimant J. F. Rairdin was the Leading Signal Maintainer in a road assignment compensated at a monthly rate and headquartered at Mason City, Iowa. Pursuant to a "Characteristic Notice" dated January 24, 1972 Carrier consolidated several prior existing signal maintenance territories into one territory effected, in addition to Claimant as Leader, by a Signal Maintainer at each of four headquarters locations in the new territory viz, Eagle Grove, Gowrie, Hampton, and Mason City. In a letter accompanying the Characteristic Notice, Carrier informed each of the four Signal Maintainers as follows:

"In connection with the Mason City maintenance territory Characteristic Notice effective January 24, 1972, you will be under the direction of the Mason City Leading Signal Maintainer, and will perform service anywhere in such territory as directed by him."

Subsequent to the consolidation, on February 29, 1972 one B. S. Williams, Signal Maintainer was used to perform overtime work at Steamboat Rock, Iowa from 5:45 P.M. to 9:45 P.M. Williams was one of the Signal Maintainers under the direction of Claimant and was head-

quartered at **Mason City**. The **Organization**, on behalf of Claimant, maintains that **Carrier** violated the **controlling Agreement** when the **Leader Signal Maintainer** was not given the prerogative to **answer** the call rather than the **Signal Maintainer**.

The **Organization** contends at the outset that because of insufficiency of **Curler's** denial on the property the claim is payable under the **Time Limit on Claims Rule** of the **1954 National Agreement**. We have reviewed the facts on this point and the myriad of cases cited relating thereto. In the circumstances of this case, we do not herein find such procedural mishandling as to invalidate resolution of the merits. For similar reasons, we reject **Carrier's** motion that the claim be dismissed for alleged procedural irregularity regarding specificity of the date on which the violation occurred. The alleged procedural violations cited by each party are arguable at best, neither was prejudiced thereby in either efforts at settlement or resort to arbitration. Accordingly, we are not persuaded by either of the procedural arguments to divert our attention from the merits of this dispute.

The **Organization** cites several sections of the current **Signalmen's Agreement** but relies on the main upon the express language of a **Memorandum of Understanding** dated **January 16, 1941** which reads as follows:

"The leading Maintainer at **Mason City** is in charge of the territory and it will be his prerogative to answer any calls on the territory;

If the leading Maintainer delegates to the Maintainer his prerogative to answer any call the Maintainer will be compensated at the leader's rate.

If while the signal Maintainer is acting as leading Maintainer, the leading Maintainer takes charge of that call or is called on another job, the Maintainer will revert to his own rate.

If the position of leading signal Maintainer become vacant the signal Maintainer will fill the position pending result of a bulletin."

**Carrier** for the most part bases its position on a denial of the relevance and applicability of the **1941 Memo of Understanding** to the combined **Mason City** territory of **1972**. In this connection **Carrier** asserts that the **Memo** was negotiated to cover a

specific set of **circumstances** existing in 1941 at Meson City and **that**, upon a change of those **circumstances** the **Memo** and its **contractual obligation thereunder** did in effect "self-destruct." Carrier **points** out that **when** drafted the **Memo** applied to a maintenance territory of **some** 300 miles. **whereas** after the 1972 consolidation of territory the **Mason** City combined territory **is some** 1400 miles in extent.

We **have reviewed** carefully the facts and the Agreement language cited. Based upon this **analysis** we are **compelled** to a conclusion that the clear **language** of the **Memorandum** of January 16, 1941 **was** violated **when** the **Leader Signal Maintainer** **was** not accorded the **prerogative** to **answer** the **overtime call** on February 29, 1972. The Agreement language therein **says** he **has** the **"prerogative** to **answer** **any** **calls** on **the territory.**" The territory **has** been **redefined** by **Carriers'** **Characteristic Notice** of January 24, 1972 but **such** unilateral **exercise** of a **management prerogative** may not obviate the clearly articulated and mutually established prerogative of the **employee herein**. While adherence to such a contractual requirement is made more difficult by a **quadrupling** of the **size** of the **territory** it may not be obviated thereby. **This Board** will not so **lightly** disregard **contractual commitments** in the interests of expediency. The appropriate tribunal for **seeking** relief from **Agreement** provisions **made onerous** by **changing** circumstances is the negotiating table and not the **arbitration** tribunal.

In light of all the foregoing we shall sustain the **claim**.

**FINDING:** **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 **Employee** involved in this dispute are respectively Carrier and Employee 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 violated.

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A W A R D

Claims ~~sustained~~.

N A T I O N A L - **ADJUSTMENT BOARD**  
By Order of Third **Division**

ATTEST: *A. W. Paulsen*  
~~Executive~~ Secretary

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