

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21266
Docket Number **SG-21134**

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: **Claims** of the System **Committee** of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District)

Claim No. 1

- a) Carrier violated and **continues to violate** the current Signalman's Agreement, particularly Rules 22, 50, 51, 68 and past practice, when **on** February 9, 1973 it issued job Bulletins deleting any and all reference to (1) "Holidays" **as** being "Regular Days off Duty" for hourly rated **am- ployes**; (2) "Saturdays" and "Holidays" as being "Regular Days off Duty" for monthly rated employees, a practice in effect since 1949 - date of 40-hour week agreement; and
- b) Carrier further violated said Agreement, including past practice,, **when** it arbitrarily started February 9, 1973 bulletining positions of signal maintainer with "Assigned Territory" as the complete **seniority** district; and as a result,
- c) Carrier now pay each **Employee** carried on **its** affected seniority district roster of 1973, one (1) hour at the **Employee's** time and one-half rate of pay for the position held on March 1, 1973, in addition to his regular **earnings**, for each work day violation cited in **parts** (a) and **(b)** continues. Bulletins involved are **Hocking** Signal **SD-73-1 through** W-73-16 dated February 9, 1973.
- d) Inasmuch as this is a **continuing** violation, said claim to apply to all future job bulletins issued after February 24, 1973, and until such **time** as Carrier takes necessary corrective action to comply with violations cited in **parts** (a) and (b).

(Carrier's File: **SG-329**; General Chairman's File: 730224-216)

Claim No. 2

- a) Carrier violated and continues to violate the current Signalmen's Agreement, particularly Rules 22, 33, **50**, 51 and 68 - including past practice, when on February 12, 1973 **it** issued Job Bulletins that deleted any and all reference to (1) "Holidays" as being "Regular Days off Duty" for hourly rated employees; (2) "Saturdays and Holidays" as being "Regular Days off Duty" for monthly rated employees, a practice in effect since 1949 - date of the **40-hour** week agreement; and

b) Carrier further violated said **Agreement**, including past practice, when it arbitrarily started on February 12, 1973 bulletining positions of signal maintainer with "Assigned Territory" as the complete seniority district; as a **result**,

c) Carrier now pay each **Employee** carried on its affected seniority district roster of 1973 one (1) hour at the **Employees** time and one-half rate of pay for the position held on March 1, 1973, in addition to his regular earnings, for each work day violation cited in parts (a) and (b) continues. Bulletins involved are Ashland Signal Nos. 11, 13 through 23 issued February 12, 1973.

d) Inasmuch as this is a continuing violation, said **claim** to apply to all future Job Bulletins issued after February 24, 1973, and until such **time** as **Carrier takes** necessary corrective action to comply with violations cited in parts (a) and (b).

(Carrier's File: SG-328; General Chairman's File: 730305-221)

Claim No. 3

Subject to my letter of last June 28 addressed to you, please accept this **as** an appeal from the decision of division engineers named below, who have declined payment of the following claim, which is essentially the same claim filed with each division engineer except for bulletin numbers:

Mr. W. M. Dowdy, Clifton Forge district, letter of April 30, 1973, file CP-SN-33, received May 4, 1973.

Mr. W. M. Dowdy, **Hinton** district, letter of April 25, 1973, file Hx-SN-1, received May 2, 1973.

Mr. C. F. Ring, Cincinnati and Chicago districts, letter of April 24, 1973, file CD-SN-66.

Mr. J. G. Smith, Huntington District, letter of April 23, 1973, file **HU-SN-30**.

Mr. C. L. Hardy, Russell district, letter of April 23, 1973, file **RU-SN-53**.

a) Carrier violated and continues to violate the current Signalmen's Agreement, particularly Rules 22, 33, 41, 50, 51, 68 - including past practice and understanding had in conference, when on or about March 1, 1973 it refused to abolish and re-advertise all positions on seniority

districts affected in the March 1, 1973 signal department reorganization, thereby not giving all **Employees** on said districts an opportunity to fully exercise their seniority; districts involved named below:

b) Carrier further violated and continues to violate said agreement, **particular** Rules cited above and past practice **when** on or about March 1, 1973, it arbitrarily assigned Maintenance Units with "assigned territory" bulletined as the complete seniority district. As a result;

c) Carrier now pay each **Employee** carried on its affected seniority district roster of 1973 one **(1)** hour at the **Employee's** time and one-half rate **of** pay for the position held on March 1, 1973, such **payment** to be in addition to his regular earnings, for each **work** day violation cited in parts (a) and (b) continues.

d) Inasmuch as this is a continuing violation, said claim to apply to all future Job Bulletins issued after February 24, 1973, and continue until such **time** as Carrier takes necessary corrective action to comply **with** violations cited in parts (a) and **(b)**;

Clifton Forge district bulletins involved - SD-7317, SD-73-9, 11, 13, 15, 18, 19, 21 and 7.3;

Hinton district bulletins involved - **Nos.** 1 through 5 dated **February** 9, 1973.

Cincinnati district bulletins involved - Nos. **G-61**, 62, 81, 82, 84, 86, 88, 89 **through** G-93.

Chicago district bulletins involved - Nos. G-63, 75, 76 through G-79 and G-83.

Huntington district bulletins involved - Nos. **SD-73-2** through SD-73-6 and SD-73-8 issued February 9, 1973.

District bulletins involved - Nos. 1 through 3 **dated** February 9, 1973.

(Carrier's File Nos.

General Chairman's File Nos.

SG-330
SG-331
SG-332
SG-333
SG-334

730224-89CF
730224-89HIN
730305-135
730305-136
730224-139)

OPINION OF BOARD: The dispute herein concerns various aspects of bulletining. It is noted that a portion of the conflict was resolved on the property, namely: that portion of the Claim relating to holidays and normal days off duty. Hence that aspect of the Claim will not be considered further.

Petitioner also, in its submission, alleges that Carrier refused to show on job bulletins a fixed meal period as required by the rules. It is noted that this aspect of the Organization's position was not reflected in the Statement of Claim and may not be considered by the Board.

There are two remaining major issues in this dispute. The first is the allegation that Carrier should have abolished and readvertised all the positions in view of the major organizational changes involved. **Petitioner** bases this Claim on a understanding **reached** on the property during the discussions leading to the January 31, 1973 Memorandum of Agreement. Carrier denies the **existence** of such understanding. It **is** indeed **unfortunate** that the parties did not reduce all alleged understandings to written-form thus minimizing the opportunity for future disagreement. This Board has no way to resolve a factual dispute between the parties, such as that herein. It is well established that **when** Petitioner relies on evidence which **is** in conflict, the **burden of** proof has not been **met** (see Awards 19939, 20729, 20408, 19501 and many others).

The second issue is the allegation **by the** Organization that Carrier erred in making the Assigned Territory in the bulletins in question, the entire seniority district. We note that new Rule 43½ provides, in pertinent part:

"(d) Normal working limits and headquarters point of Signal Maintenance Units will be shown on the bulletins advertising the positions on such Units. This will not, however, preclude a Maintenance Unit being used to perform **work at any point on the seniority district.**"

We find no rule support for Petitioner's position and no other evidence to indicate the intent of the parties when the new rule was agreed to. On its face **Rule 43½** certainly does not preclude referring to the entire seniority district **as** the territory in the bulletins, and we have no power to change or re-write the rules.

It must be concluded that **Petitioner** has not met its burden of proof with respect to the allegations embodied in the Claims, and hence the claims must be dismissed.

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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 **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 the burden of proof was not met.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **15th** day of **October** 1976.