NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21330

THIRD DIVISION Docket Number SG-21229

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Denver and Rio Grande Western Railroad Company:

(A) The Denver & Rio Grande Western Railroad Company violated the Railroad Labor Act and their present agreement with the Brotherhood of Railroad Signalmen including supplements and revisions thereto on April 18, 1973 when it failed and/or declined to apply that Act and that agreement by changing the rate of Pay of Mr. B. H. Rowe retroactively from October 1, 1972 to date.

(B) The Denver and Rio Grande Western Railroad Company should now restore the rate of pay to the proper rate as agreed to by the agreement including revisions and supplements thereto and restore that pay improperly deducted from Mr. Rowe's pay checks for the Month of April 1973 in the total amount of $57.22 as shown by their published rates and to continue to restore any amounts improperly paid account the reduced rate until the proper rate for the position is restored.

OPINION OF BOARD: Claimant is the Incumbent of the first shift signal maintainer position in a retarder yard at Grand Junction, Colorado. Claimant was assigned to this position after it was advertised on Bulletin No. 1156 dated September 9, 1972, which showed the rate of pay as $5.07 per hour.

October, 1972 through March, 1973, although Claimant's position had been bulletined at the Signal Maintainer's rate of $5.07 per hour which, effective October 1, 1972 per national agreement, was increased to $5.32, Claimant put in on his time roll at the Lead Signal Maintainer rate of $5.36 per hour.

In April, 1973, it came to the attention of Carrier's auditing and Signal Departments that as a result of the higher rate of pay ($5.36) put in on his time roll by Claimant, Claimant had been overpaid for the period $41.60 at straight time, and $10.24 for overtime, making a total of $51.84.

On April 18, 1973, the Signal Engineer wrote Claimant two letters. The first letter informed Claimant that he (Claimant) had been improperly submitting the wage rate on his time roll; instructed him to claim the correct time, which was that of a Signal Maintainer; and also inquired by whose authority Claimant was putting in for $5.36 par hour.

The other letter informed Claimant that the money overpaid to him was being deducted from his second period earnings in April, 1973, which was done.

On April. 22, 1973, Claimant wrote the Signal Engineer to the effect that he would henceforth show his rate of pay as a Signal Maintainer instead of Leading Signal Maintainer, although he was doing this under protest.

On June 11, 1973, the General Chairman filed the instant claim, on behalf of Claimant, with Claimant's Signal Supervisor.

The basis of the claim was that under an old Memorandum Agreement dated January 29, 1953, the Carrier and Union had in part agreed that:

> Signal Maintainer on First Shift in retarder yard, Grand Junction, when such position established, to be classified as a Leading Signal Maintainer.

Now, Carrier moves for dismissal of the Claim on the grounds that it was not filed within sixty (60) days of the occurrence of the alleged violation as required by Rule 67 of the Agreement.

The record shows that the position on which Claimant bid was bulletined and advertised as a Signal Maintainer position with the Signal Maintainer rate of pay, $5.07 per hour. The validity of that Bulletin was not disputed, and no claim was presented with respect to the Signal Maintainer rate of pay advertised therein.

The Board finds that if Claimant thought the Bulletin was in error, incorrect, or improper, he should have submitted a claim within sixty (60) days of his knowledge of such alleged error. However, it was June 11, 1973, before the instant claim was filed.

For the foregoing procedural violation the Board is compelled to dismiss the claim, and need not consider other issues presented in the record.

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 Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary'

Dated at Chicago, Illinois, this 30th day of November 1976.