

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21418
Docket Number SG-21207

Walter C. Wallace, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (former **Pere** Marquette Railroad):

a) Carrier violated and continues to violate the current Agreement and its intent negotiated on behalf of Carrier's **Communication Employees**, particularly Rules 1, 103 (b), 213, 701, 908, 920 and letter dated January 20, 1941 from former Signal Engineer G. W. Trout addressed to former **BRS** General Chairman A. C. **Digby** interpreting said Agreement, when Carrier refused to allow its **Communication** and Signal' (C&S) Maintainers the same rate of pay ~~as~~ paid other Signal Maintainers assigned and performing the same type of **signal** work.

b) Carrier now take necessary action to compensate its **C&S** Maintainers named below at the rate of \$5.79 (effective January 1, 1974) for all hours worked resulting from the violation cited in part (a) above:

| | <u>C&O ID Number</u> | | <u>C&O ID Number</u> |
|----------------------|------------------------------|-----------------------|------------------------------|
| C. J. Hoaglin | 2490654 | G. H. Jennings | 2487447 |
| C. L. Packer | 2487272 | R. F. Fuller | 2484430 |
| G. A. Lutkus | 2420255 | J. W. McKillop | 2484272 |
| R. G. Robertson | 2933468 | M. E. Penrose | 2484429 |
| J. L. Hawkins | 2487290 | R. K. Wilkins | 2484439 |
| D. F. Reusser | 2491222 | | |

c) Inasmuch as this is a continuing violation, said claim to be **retroactive** sixty (60) days from date filed (January 10, 1974) and to continue until such time as Carrier takes necessary corrective action to comply with violation cited in part (a) above.

/General Chairman file: 74-1-PM. Carrier file: **SG-3747**

OPINION OF BOARD: This Claim is made on behalf of eleven **Communication** and Signal (C & S) Maintainers who assert they are entitled to the same rate of pay as paid to Signal Maintainers. The history of this dispute goes back to an agreement of January 20, 1941 wherein **employees** previously classified as lineman were re-classified as Telegraph-Signal Maintainers with the same rate of pay as signal maintainers. The Organization submits twenty-four exhibits covering the period 1951 to and including the **communications** on the property relative to the instant dispute. Their contention is that the parity arrangement for pay rates of signal maintainers continued throughout this period until the **Pere Marquette** Agreement, effective March 1, 1973. In that Agreement carrier agreed to increase the hourly rate of Signal Maintainers Working Independently by five cents per hour. As a consequence Signal Maintainers Working Independently have the hourly rate of \$5.79 per hour while C & S Maintainers earn \$5.74 per hour.

The Organization claims the 1941 agreement should control and the C & S Maintainers are entitled to the additional five cents per hour. Further, it points to the practice of thirty-three years (1941 - 1974) which "has the same force and effect as the provisions of the contract itself".

The carrier claims the new agreement merely added a new classification and to that extent changed the former parity arrangement. We are persuaded that the Carriers' position must be sustained.

The burden is on the claimants and their representatives to support their contention that the prior long standing arrangement that kept Signal Maintainers and C & S Maintainers at the same pay level, was to continue after the 1973 agreement.

It is the agreement of the parties that must control. An earlier agreement may be changed by a later one and frequently we look to established past practice as a method of determining what the parties meant when they reached an agreement, particularly one with **ambiguties**. But that does not mean a practice based upon a prior agreement cannot be changed in a new agreement. If the claimant is to persuade us something different was intended in the 1973 agreement it must meet its burden of pmof with evidence to that effect. It did not do so here. The evidence is persuasive to the effect that the March 1, 1973 agreement covered the Signal Department **Employees** and not the **Communications** Department **Employees** which includes C & S Maintainers.

Similarly, the **Rules** 1, 103, 213, 701(a), 908 and 920 are susceptible to the same conclusion and do not require separate discussion.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1977.