

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21516
Docket Number X-21188

Walter C. Wallace, Referee

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

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

a) Carrier violated and continues to violate the current Signalmen's Agreement, particularly Rules 1, 304, 505, 506, 601, 701, 908 and 920, when on January 7, 1974 Supt. Signals A. C. **Trimble** and on January 15, 1974 each of you arbitrarily issued bulletins that resulted in changes on the Saginaw, Detroit and Grand Rapids seniority districts in violation of said agreement and its intent.

b) Carrier now allow each **employee** affected by such action cited in part (a) above one (1) hour at his respective pro rata rate of pay in effect on January 25, 1974, in addition to pay already allowed, for each day such violation cited in parts (a) and (c) continues.

c) Carrier further be required to recant its Bulletin Nos. **SSS-1-74** through **SSS-4-74**, its Saginaw Bulletin No. **S-1-74** dated January 15, 1974, its Detroit Bulletin No. **D-1** dated January 15, 1974, its Grand Rapids Bulletin No. **GR-1-74** dated January 15, 1974, and negotiate with the Brotherhood whatever changes it desires at the Saginaw Signal Shop.

d) Inasmuch as this is a continuing violation said claim to be retroactive to the date such changes took place and to continue until such **time** as Carrier takes necessary corrective action to comply with violations cited in parts (a) and (c) above.

/General Chairman file: ' **73-76-NR**. Carrier file: **SG-3757**

OPINION OF BOARD: Prior to November 13, 1972, the Carrier's Saginaw Signal Shop consisted of a Leading Signaller and three (3) Signalmen. On that date, the General Chairman Parker of the Brotherhood was informed that the Carrier was going to make changes in that force and thereafter, discussions were held **between** them. In January 1974, the Carrier implemented this reorganization through bulletins which resulted in the following: the Leading Signaller's position was abolished and was replaced with a **Foreman**. Three additional positions were added to the Saginaw Signal

Shop force with the result that there were five (5) Signalmen and one (1) Assistant Signalman. With a new Foreman, the total force had been increased **from** four (4) to seven (7).

At the same time, the Carrier abolished a total of three (3) Assistant Signalman's positions with separate home stations at Grand Rapids, Detroit and Saginaw. Aside from the new foreman, the overall effect here was to reduce Carrier's field forces by three (3) positions and expand the Saginaw Signal Shop by three (3) positions.

The Brotherhood objected to these changes on a variety of grounds which will be discussed. At the outset, the Carrier raises certain questions relating to the propriety of this claim insofar as it was addressed to three Division Engineers which it claims ~~was not in accordance with procedure.~~ In addition, Carrier objects to claims directed to "each employe affected" without further identification. We will consider these matters first.

When the matter of presenting the claims is examined, the Brotherhood has the better side. The problem originated with the February 23, 1973 letter instructing that claims should be handled with the Division Engineers. When the Superintendent of Signals changed that orally on January 10, 1974, the General Chairman of the Brotherhood acted prudently in requesting written confirmation of that change. Unfortunately, that written confirmation was not sent until April 16, 1974. The Brotherhood was required to act long before that and we cannot say it acted improperly when it did so in accordance with the latest written advice. We are persuaded that the Carrier should not be permitted to invalidate this claim on this ground.

With respect to the matter of unnamed claimants, we have more difficulty. Certainly, the Carrier should not be forced into guess work or speculation as to the identity of claimants. Claimants should be identified or identifiable but that does not mean it is necessary to specifically name the employe in all claims. It is sufficient if the **employe** is "**readily identifiable.**" Award 20054 (Sickles). ~~It follows that this question must be deferred until the substantive issues are considered and we can determine whether any claims are sustained here.~~

We are dealing with matters that generally fall within the **category** of **management** rights. Unless these rights are circumscribed by the agreement between the parties their exercise is sustained. See Award 19596. If the ~~agreement does circumscribe them they may be exercised only in accordance with the agreement.~~ Within this framework the issues arise here.

The Brotherhood claims the Carrier's violations relate to Rules 1, 304, 505, 506, 601, 701, 908 and 920 in that the issued bulletins made changes

in violation of the agreement. Putting aside for the moment the rules relating to the form and content of the job bulletins (Rules 505, 506 and 601) we will consider the other rules. Rule 1 is a scope rule and the violation alleged here is not clear. Rule 304 requires that Assistant Signalmen must be placed in positions where they will have an opportunity to avail themselves of necessary training and experience to qualify them for journeyman's positions and are subject to transfer only "by special written agreement between the General **Chairman** and the **management**." If the total effect of the Carrier's actions are viewed as a transfer of Assistants to the Saginaw Signal Shop, the argument would have merit. But the actions here involved the abolition of certain jobs in various locations and creation of new jobs at the Saginaw Signal Shop. It follows that Rule 304 **cannot** prevent that action. An Assistant cannot claim **im-**
munity from job abolishment because of this rule. See Award 13933.

Rule 701 deals with pay and based upon the record here, the violation is not apparent. The Brotherhood's argument is clarified when we consider its argument with respect to Rule 908, which provides:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay"

Here the 'spotlight is placed on a specific **employee**, Lead Signalman Peabody. The claim is made that his position was abolished yet he still performs "relatively the same class of work" at the Signalman's hourly rate while he had performed the same work prior to the change at the monthly rate due a Leading Signalman.

We do not see it this way. The facts are that Peabody received
- - - **the higher monthly** rate because **he was** a Leading Signalman whose responsibilities included supervision of three (3) men. When the Saginaw Signal Shop was expanded, the rules required that Supervision be placed in a foreman. See Rules 101, 103, 601 and 701. It happens that Peabody could not qualify as a foreman and he had to be dropped back to the hourly paid classification of Signalman. Under these circumstances, we do not believe-
Rule 908 was violated. - - - -

Lastly, it is claimed by the Brotherhood that Carrier violated Rules 505(c), 505 and 601(b) in that its bulletins were improper in that they did not follow the required form in various respects. Carrier concedes the bulletins did not follow "a verbatim replica of the form set forth in the Agreement, they yet are synonymous to some in both wording and form" When we look to Rule 505(c) it speaks in the imperative and provides in pertinent part "Bulletins will be prepared in accordance with forms prescribed

in Rule 506 . . ." (emphasis added). The problem here is that the parties are at issue concerning an alleged verbal agreement concerning interpretation changes in the **form** of bulletins. This issue was raised on the property. See Brotherhood Exhibit No. **15**, Letter from General Chairman Parker to Mr. L. W. Burks, Director of Labor Relations for the Carrier, dated July 9, 1974. Based upon this record, we cannot accept the assertions of either side and reach a conclusion concerning the alleged verbal agreement. This Board is left with the plain meaning of Rule 505(c) which mandates the form to be followed.

The argument is made that these rules are violated because: **(1)** the Bulletins for the new positions do not state that such positions are advertised **....** **"in accordance with the signal department employees' agreement"**; **(2)** the home station is listed as "Headquarters"; **(3)** the meal periods assigned are allegedly not shown; **(4)** the rest days are listed as "Regular Days off Duty"; **(5)** a brief description of duties was added to the bulletins; and **(6)** the Assistant Signaller position is not a "new" position.

Clearly, the carrier did not follow **the prescribed form** and a comparison with the rule requirements would indicate that is so concerning the listing of the "home station," the "Established Meal Period" and "the rest days." We do not ignore the fact the carrier added a brief description of duties not required by the rules. Carrier argues that the form used "are synonymous" and, in effect, there is no prejudice by the changes made. This may be true as to the "home station" and "the rest days." We do not believe, however, that a reference to "one half hour lunch period" is a synonym for an "Established Meal Period." The difference between these two concepts could be significant. As we see it a "one half hour lunch period" could be a floating lunch break and that appears to be inconsistent with the rule requirement. On this basis alone we conclude the carrier violated the rules of the agreement **with respect** to the **required** job bulletin form. The question of relief remains for determination.

Under part **(b)** of the claim, the Brotherhood proposes an allowance of one hour at the pro rata rate. This contemplates a penalty and we conclude there is no basis for this in the agreement. Moreover, that part of the claim that seeks a rescind of the bulletins and, presumably, a restoration of the positions abolished has no basis in the rules here and must be denied.

As we pointed out earlier, this claim seeks an allowance for "each **employee** affected by such action" and such unnamed claimants would have standing if they are readily identifiable. As we view this record, more information would be required if this Board is to issue a determination on the merits as to employees affected by this violation. Award 21135 (Sickles).

Those asserting the claim must show more than a rule violation to establish their right to a monetary award. The burden of proof rests with them to show damages to a **claimant** who is named or readily identifiable. That burden has not been satisfied here and the claim for a money **award must be denied.**

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 violated in part as indicated in the Opinion of the Board.

A W A R D

(a) Claim is denied except for violations of Rules 505, 506 and 601 and with respect to these rules the **claim** is sustained.

(b) Claim is denied.

(c) Claim is denied.

(d) Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1977.