

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21857**
Docket Number SG-21769

James F. **Scearce**, 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 former Pere Marquette Railroad:

claim No. 1

(a) Carrier violated the current Signalmen's Agreement,, particularly Rules 210 and **216**, when on or about December **13, 1974**, it denied reimbursement to Claimants for their meal expenses during months of October and November **1974** which were submitted in proper manner on Carrier's Monthly Expense Report Form **X-28**. Claimants hold positions **with assigned** headquarters at Saginaw, Michigan, Signal Construction Force No. **1700**. As a result thereof,

(b) Carrier now reimburse Claimants for the amounts and periods shown below, copies of their **X-28** Reports filed with Carrier again filed with our letter-of initial claim as information:

P. H. Franzel	2613649	October 25 - 31	\$11.86
		November 4 - 27	43.25
		- 31	
G. D. Tarrant	2454403	October 25 - 28	11.45
		November 1	42.00
D. I.,. Bennett	240213	October 25 - 31	11.80
		November 4 - 27	34.95

(c) Carrier further allow Claimants interest on the above amounts at the rate of 1 percent, per month, **compounded** monthly, commencing with date of November **16, 1974**, for October expenses and date of December **16, 1974**, for November expenses, dates such expenses should have been reimbursed in accordance with intent of Rule **216**. (**Carrier's** File: **SG-426**; General Chairman's File: **74-12-123**)

claim No. 2

(a) Carrier violated the current Signalmen's Agreement, particularly Rules 210 and 216, when it denied reimbursement to Claimants named below for their noon meal expenses during months shown below which were submitted in proper manner on Carrier's Monthly Expense Report Form **X-28**. Claimants hold positions with assignment to Signal Construction Force NO. 1700, home station at Saginaw, Michigan.

(b) Carrier now reimburse Claimants named below for the amounts and periods also shown below, copies of their **X-28** Reports filed and returned by Carrier enclosed with our letter of initial claim:

J. T. Parker	2615382	period of December 23-31, 1974	\$17.35
G. D. Tarrant	2454403	period of December 23-31, 1974	14.69
P. H. Franzel	2613649	period of December 23-31, 1974	8.73
		and period of January 2-29, 1975	4.57

(c) Carrier further allow Claimants interest on the above amounts at the rate of 1 percent, per month, compounded monthly, commencing with date of January 16 for December expenses and date of February 16 for January expenses, dates such expenses should have been reimbursed in accordance with intent of Rule 216. (Carrier's File: Sg-429; General Chairman's File: 75-U-123)

OPINION OF BOARD: The salient issue is whether Rule 209 or 210 applies. Applicable provision of these rules are reproduced as follows:

"Rule 209 - **LEAVING AND RETURNING** TO HOME STATION SAME DAY

Hourly rated employees performing service requiring them to leave and return to home station on the same day will be paid continuous time, exclusive of meal periods except as provided by Rule 201 (e), from time **reporting** for duty until release at home station. Except as **provided** by Rule 906, time spent in traveling or waiting shall be paid for at straight time rates. This rule will also apply to an employee who has not been released from service to rest at a point away from home station and whose return trip runs beyond midnight or into the next calendar day. These employees will be allowed actual expenses except for the cost of noon-day meal."

**"Rule 210 - LEAVING AND NOT ORDINARILY RETURNING TO HOME
STATION SAME DAY**

(a) Hourly rated employees performing service requiring them to leave and not return to home station on the same day, will be allowed time for traveling or waiting in accordance with paragraphs (b) and (c) of this rule. Actual expenses will be allowed at the point to which sent; however, if meals and/or lodging are provided by the carrier, no expense allowance will be made for those accommodations provided..."

Claimants were members of the Signal Construction Forces with assigned home station at Saginaw, Michigan. They worked regularly Monday through Friday, 7:30 a.m. to 4:00 p.m., returning daily to their home station. The Union contends that a historical past practice existed of **reimbursing** hourly rated employees, under the Agreement extending back over a period of twenty **years**, when such employees were required to either work outside of the limits of their home station and/or where they were not returned to their home station for the noon meal as covered by Rule 210.

The Carrier relies upon the language of Rule 209, pointing out that the Claimants return to their home station in the **same** day. The Carrier admits, that on occasion similar employees have incorrectly been reimbursed for such expenses, but contends that such errors in judgment by persons not in a position to establish **Company** policy do not overcome the clear and unambiguous language of Section 209.

While other factors and issues were postulated in this case, the validity of the claim rests primarily upon: (1) whether Rule 210 can be construed to cover the work conditions of the Claimants or, (2), whether **past practice**, if sufficiently established can be considered to be controlling. On Point (1), Rule 209, including its caption are in no way vague or ambiguous. Nothing in the language of Rule 209 can be construed to suggest that affected employees must be returned to their home station for the noon-day meal period.

insofar as the effect of **past** practice is concerned, the Union contended a longstanding practice of payment for noon meals; however, the record is devoid of any more than superficial evidence to that effect. Even considering those payments that may have been made, nothing was adduced to indicate approval of such actions at a level of decision-making **within** Carrier management to **support** the proposition that management had affirmed a practice which negated the clear and unambiguous language of Article 209.

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

Claims are denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third **Division**

ATTEST:

A. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this **18th** day of January **1978**.

