

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22787**
Docket Number SG-22603

James F. **Scearce**, Referee

PARTIES TO DISPUTE: ((Brotherhood of **Railroad** Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "**Claim** of the General **Committee** of the Brotherhood
of Railroad Signalmen on the Chicago and North
Western Transportation Company:

Claim No. 1

- (a) On June 23, 24, and July 9, 1977, the carrier violated the current Signalmen's Agreement, particularly **Rule** 16, concerning the checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor **Freund** in his letter to all **Signal** Maintainers dated June 22, 1977.
- (b) Following dates and times made part of this claim.
June 23, 1977 4 hours 4.5 minutes.
June 24, 1977 4 hours 30 minutes.
July 9, 1977 12 hours
Total of 21 hours 15 minutes.
- (c) Carrier now be required to compensate **former** Signal Maintainer J. **R. Lamz** formerly located at Glen **Ellyn**, Ill. **now** a supervisor on the Iowa Division at his applicable overtime rate of pay for all time held **on** a standby basis for the dates and **times** listed above.
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"Claim No. 2

- (a) 'on June 25, 26, July 2, 3, 4, 9, and 10, 1977, the carrier violated the current Signalmen's Agreement, particularly Rule 16, concerning the checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor Freund *in his letter* to all Signal Maintainers dated June 22, 1977.
- (5) Following is the dates and times made part of this claim
- | | |
|---------------|---------------------|
| June 25, 1977 | 1 hour. |
| June 26, 1977 | 10 hours. |
| July 2, 1977 | 8 hours. |
| July 3, 1977 | 8 hours. |
| July 4, 1977 | 5 hours 30 minutes. |
| July 9, 1977 | 13 hours. |
| July 10, 1977 | <u>12</u> hours. |
| Total of | 57 hours 30 minutes |
- (c) Carrier now be required to compensate Leading Signal Maintainer T. A. Cross at his applicable overtime rate of pay for all time held on a standby basis for the dates and times listed above.,

Claim No. 3

- (a) On June 27, July 1, 2, 3, 4, 8, and 10, 1977, the carrier violated the *current* Signalmen's Agreement, particularly Rule 16, concerning the checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times made part of this claim
- | | |
|---------------|---------------------|
| June 27, 1977 | 4 hours. |
| July 1, 1977 | 2 hours 30 minutes |
| July 2, 1977 | 8 hours. |
| July 3, 1977 | 8 hours. |
| July 4, 1977 | 5 hours 30 minutes |
| July 8, 1977 | 8 hours 30 minutes |
| July 10, 1977 | <u>4</u> hours. |
| Total of | 40 hours 30 minutes |
- (c) Carrier now be required to compensate Signal Maintainer W. R. Vodden located at West Chicago, Ill. at his applicable overtime rate of pay for all time held on a standby basis for the dates and times listed above.

"Claim No. 4

- (a) On July 24, and July 26, 1977, the carrier violated the current Signalmen's Agreement, particularly Rule 16, concerning the checking out and checking in for Signal Maintainers as *per instructions* issued by Signal Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times made part of this claim
- | | |
|---------------|-----------------|
| July 24, 1977 | 5 hours. |
| July 26, 1977 | <u>4</u> hours. |
| Total of | 9 hours. |
- (c) Carrier now be required to compensate Leading Signal Maintainer T. A. Cross, located at West Chicago, Ill. at his applicable overtime rate of pay for all time held on a standby basis for the dates and times listed above.

Claim No. 5.

- (a) On July 24, and July 25, 1977, the carrier violated the current Signalmen's Agreement, particularly, Rule 16 concerning the *checking out* and checking in for *Signal* Maintainers as per instructions issued by Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times made part of this claim
- | | |
|---------------|-----------------|
| July 24, 1977 | 4 hours. |
| July 25, 1977 | <u>4</u> hours. |
| Total of | 8 hours. |
- (c) Carrier now be required to compensate Signal Maintainer W. R. Vodden, located at West Chicago, Ill. at his applicable overtime rate of pay *for* all time held on a standby basis *for* the times and dates listed above.

"Claim No. 6.

- (a) On August 5, 6, 7 and August 13, 1977, the carrier violated the current Signalmen's Agreement, particularly, Rule 16, concerning the checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times are made part of this claim.
- | | |
|-----------------|---------------------|
| August 5, 1977 | 7 hours 30 minutes |
| August 6, 1977 | 3 hours |
| August 7, 1977 | 6 hours. |
| August 13, 1977 | <u>8</u> hours |
| Total of | 24 hours 30 minutes |
- (c) Carrier now be required to compensate Leader Signal Maintainer Thomas Cross, located at West Chicago, Illinois at his applicable overtime rate of pay for all time held on a standby basis for the times and dates listed above.

Claim No. 7

- (a) On August 6, 7, 12, 17, and 21st, 1977, the carrier violated the current Signalmen's Agreement, particularly, Rule 16 concerning the checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times are made part of this claim
- | | |
|-----------------|---------------------|
| August 6, 1977 | 8 hours. |
| August 7, 1977 | 5 hours 30 minutes |
| August 12, 1977 | 8 hours |
| August 17, 1977 | 6 hours |
| August 21, 1977 | <u>9</u> hours |
| Total of | 36 hours 30 minutes |
- (c) Carrier now be required to compensate Signal Maintainer W R. Vodden located at Glen Ellyn, Ill. at his applicable overtime rate of pay for all time held on a standby basis for the times and dates listed above.

Claims 1 through 7: Carrier file: 79-1-45.

"Claim No. 8.

- (a) On September 3, 4 and 5, 1977, the carrier violated the current Signalmen's Agreement, particularly Rule 16, concerning checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times are made part of this claim
- | | |
|-------------------|-----------------|
| September 3, 1977 | 12 hours |
| September 4, 1977 | 12 hours |
| September 5, 1977 | <u>12</u> hours |
| Total of | 36 hours |
- (c) Carrier now be required to compensate Signal Maintainer T. R. Hobbs located at South Pekin, Illinois at his applicable overtime rate of pay for all time held on a standby basis and times listed above.

Claim No. 9

- (a) On July 30, 31 and August 1, 1977, the carrier violated the current Signalmen's Agreement, particularly Rule 76, concerning the checking out and checking in for Signal Maintainers as per instructions issued by Signal Supervisor Freund in his letter to all Signal Maintainers dated June 22, 1977.
- (b) Following dates and times are made part of this claim
- | | |
|---------------|---------------------|
| July 30, 1977 | 6 hours 10 minutes |
| July 31, 1977 | 20 hours 20 minutes |
| Aug. 1, 1977 | <u>7</u> hours |
| Total of | 33 hours 30 minutes |
- (c) Carrier now be required to compensate Leader Signal Maintainer W. G. Myers, located at South Pekin, Illinois at his applicable overtime rate of pay for all time held on a standby basis for the dates and times listed above.

Claims 8 and 9: Carrier file: 79-1-46.

"Claim No. 10

- (a) On December 24, 25, 26 and 27, 1977, the carrier violated the current **Signalmen's Agreement** particularly, **Rule 16**, concerning the checking out and checking in for signal maintainers as per instructions issued by Signal **Suprv. Freund** in his letter to all signal maintainers dated June 22, 1977.
- (b) Following dates and times are **made** part of this claim.
- | | |
|-------------------|---------------------|
| December 24, 1977 | 7 hours 45 minutes |
| December 25, 1977 | 24 hours |
| December 26, 1977 | 24 hours |
| December 27, 1977 | <u>7</u> hours |
| Total of | 62 hours 45 minutes |
- (c) Carrier now be required to compensate Leader Signal Maintainer W. G. Myers, located at South Pekin, Illinois at his applicable overtime rate of pay for all time held on a standby basis for the dates and times listed above.

Claim No. 10: Carrier file: 79-1-47."

OPINION OF BOARD: Basis for these claims is the application of **Rule 16** (a) of the Agreement in effect between the parties at the time of events germane to this dispute:

"SUBJECT TO CALL

16(a) **Employees** assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railway, and will notify the person designated by the management where they **may** be called. When such **employees** desire to leave their home station or section they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, regular assignee will be called."

Events cited in the claims occurred on various dates in June, July, August, September and December of 1977. They followed the issuance, by the Signal Supervisor, of a letter dated June 23, 1977, to "All Signal Maintainers" which stated:

"Signal Maintainer check-out sheets have been provided to the following locations:

Dispatcher's Office	• Chicago
Dispatcher's Office	• South Pekin
JB Tower	• West Chicago
NY Tower	• Nelson

Effective immediately, a record will be kept at the above locations showing the time checked out and the **time** checked back in. Maintainers will check out with their designated check-out point as indicated below. Each **group** will have at least one maintainer available for call on nights and weekends. Therefore, if all but one maintainer has checked out in a group, the remaining man will not be allowed to check out."

According to the Organization, the Claims herein are based upon the application of such directive and are made by the Signal Maintainers not allowed to "check out" as per the June 22, 1977, directive, who thus considered themselves "subject to call."

The record reflects eloquent **arguments** by both parties -- by the Organization (**among** other things) that the Claimants were on "standby **time**" and entitled to compensation, and by the Carrier that it must be able to sustain operations continuously and thus **must** have access to qualified employees on an emergency basis at all times. Neither argument is squarely on point with the issue before the Board. What is, is whether or not the Carrier **made** a unilateral change to the language and application of the appropriate Rule. We find in the **affirmative** in that regard. Rule 16(a) is neither vague and thus in need of clarification, nor is it ambiguous and subject to various applications. Apparently, what the Carrier sought to deal with was the potential for all Signal Maintainers to register absent and **it** thus be devoid of qualified employees on an emergency basis. We find no such potential under this Rule; indeed, an **affirmative** obligation rests upon such employees to ensure that the Carrier **knows** where all **may** be found if they are away from their **home** stations. **Essentially**, the Carrier has deprived the Claimants of this degree of **flexibility**, presumably on the dates set forth herein. Such action exceeds the restrictions set forth in Rule 16(a) and thereby changes its application.

We suggest, however, that the extent of the Claims **may** be violative of laws and statutes; we also conclude that no specific Rule under the Agreement can be cited as applicable in this regard. **What is** involved is a demand of punitive compensation for a loss of flexibility

for the Signal Maintainers who were not permitted to "check out" on the various weekends cited in the claims. We remand this matter back to the parties for 90 days, during which they **are** to endeavor to reach an **accommodation** as to compensation for the improper restrictions placed upon the affected **employees**. Failure of the parties to do so within such period will result in this Board **accomplishing** this responsibility.

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 Agreement was violated.

A W A R D

The Agreement was violated to the extent set forth in the Opinion; claims are to be disposed of as **set** forth in the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD

By Order of Third Division

ATTEST:


Executive **Secretary**

Dated at Chicago, Illinois, this 14th day of March 1980.

