

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23041
Docket Number **SG-23115**Martin **F. Scheinman**, Referee

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

STATEMENT OF CLAIMS: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District)

Claim No. 1:

a) Carrier violated the **C&O** Railway Chesapeake District Signal Agreement, particularly Rule **64(c)** and past practice, when it refused **Signalman** Max B. Baker for loss of **personal** tool⁸ and tool box stolen from Carrier's truck *on or* about night of **January 11, 1978**, while truck was located at the Chuck Wagon Motel.

b) Carrier **now** reimburse, or replace, Signalman **Max B. Baker**, **C&O ID No.** 2614161, the **sum** of \$350.00 to cover replacement of his personal tools and tool box required for and used for Carrier's benefit.

Carrier's file: SC-546; General **Chairman's** file **78-8-CD**.

Claim No. 2:

8) Carrier violated the **C&O** Railway Chesapeake District **Signal Agreement**, particularly Rule **64(c)** and past practice, when it refused to reimburse Signal employees named below for loss of their personal tools and/or tool box stolen from **C&O** Railway tool and office cars while located at New **Richmond, Kentucky** on or about June **12, 1978**.

b) **Carrier** now reimburse, or replace in kind, System Signal Gang employees named below for amounts **shown** which reflect cost of personal tools and/or tool box required for and used for **Carrier's** benefit:

<u>"Name</u>	<u>Position Assigned</u>	<u>C&O ID Number</u>	<u>Amount</u>
G. S. Brown	Foreman	2611302	\$195.00
P. E. Fauver	Ld. Signalman	2614359	115.60
J. C. Frye	Signalman	2618563	314.00
D. K. Patterson	Signalman	2618617	852.53
T. C. Collins	Signalman	2618412	
R. S. Peery	Asst. Signalman	2612337	247.51

Carrier's file: SG-560; General Chairman's file: 78-34-CD."

OPINION OF BOARD: The fact situation in this dispute is reasonably clear.
There is in effect, on this property, a rule which provides in pertinent part, as follows:

"RULE 64 - - SANITARY CAMP CARS, DRINKING WATER,
TOOLS, ETC.

(c) The railroad will furnish the employees such tools and equipment as are necessary to perform their work, except pocket tools usually furnished by skilled workmen."

The Claimants identified in the Statement of Claim were regularly assigned in the Signalman's Class when, on the dates in question - January 11th, 1978 and June 12th, 1978 - due to theft, they experienced the loss of personal tools. They initially attempted to seek reimbursement for their declared value of the stolen tools from Carrier's Claim Department. When their requests for reimbursement were denied by the Claim Department, the Organization, on their behalf, initiated and progressed the claims which are the subject of this dispute. Rule 64(c), quoted supra, is the only Rule which has been cited, argued and relied upon by the Employees in support of the claims. The Organization also has alleged that an established practice of reimbursement in similar situations existed on this property.

Carrier has denied the applicability of Rule 64(c) to this fact pattern. It also denies the existence of any system-wide bona fide past practice.

Both sides raise several other peripheral arguments that we need not address as they are not dispositive of the primary issue.

From our review of the entire record and after consideration of the respective arguments of the parties, this Board is convinced that the claims 8s presented in this case are neither covered by the Rules Agreement nor fall within the authority of this Board 8s established by the Railway Labor Act. Moreover, the proof offered in the record relative to the alleged practice fails to support the assertion that an agreed understanding or practice is in effect on this property that such losses will be paid for by Carrier. Therefore, we must dismiss the claims 8s presented.

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.