

**Award No. 5767**

**Docket No. SG-5783**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Livingston Smith, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**FLORIDA EAST COAST RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Florida East Coast Railway that Signal Maintainer J. C. Reithmaier be compensated at the Leading Maintainer's rate of pay while required to lead, direct, and while held responsible for the work performed by a Signalman and Assistant Signalman on his maintenance territory during a rail relaying program starting on or about April 18, 1950.

**EMPLOYEES' STATEMENT OF FACTS:** Signal Maintainer Reithmaier is a regularly assigned employe on signal maintenance territory No. 15 in the vicinity of Miami, Florida.

During the period of time involved in this controversy a rail relay program was in progress and additional labor was furnished to Reithmaier to handle the extra work created on his maintenance territory account the rail relaying.

The additional labor furnished to Reithmaier consisted of a Signalman and Assistant Signalman. The time worked by this extra labor was carried by Reithmaier on his daily work reports.

At the time of this dispute, Reithmaier's rate of pay as a Maintainer was \$1.75 per hour and the Leading Maintainers rate of pay was \$1.81 per hour. Hence, the claim is actually six cents for each hour that the additional labor was assigned to work with Reithmaier during the rail relay program.

The seniority of Leading Maintainers and Leading Signalmen when created and accumulated is carried in one seniority class on the seniority roster as provided in Rule 16 (b) of the agreement.

An agreement bearing effective date April 1, 1948, as revised, is in effect between the parties to this dispute and is by reference made a part of the record covering the Brotherhood's claim.

This claim was handled on the property in the usual manner without securing a satisfactory settlement. All material or evidence presented in this submission was used or known to the Carrier in the handling of this claim on the property.

**POSITION OF EMPLOYEES:** It is the position of the Brotherhood that the claimant, Signal Maintainer J. C. Reithmaier, was in fact, as well as within the meaning and intent of Rule 1 (c) of the current Signalmen's Agreement, a Leading Maintainer during the period involved in this claim.

Furthermore, if the claimant had been temporarily assisted with this extra work by a maintainer from the adjoining section, even then he would not have fallen within the classification of leading maintainer and been entitled to leading maintainer's rate of pay. Paragraph (c) applies to only "a maintainer regularly assisted by and held responsible for the work of one or more maintainers with or without their assistants . . ." Assistance on non-recurring extra work is not regular assistance. In this respect Rule 1 (c) is more explicit in defining a leading maintainer than the rule in Award 4871 involving a similar claim which that Award denied.

4. As related in Item No. 1, Carrier's Statement of Facts, the Railway inaugurated its rail relaying program in 1942, and it is now completed. This program was progressed continuously after 1942, except for short intervals while awaiting delivery of material. During the period that a signalman and assistant signalman were assigned to accompany the rail relaying gang, as described in Items Nos. 3 and 4, Carrier's Statement of Facts, rail was relaid on every one of the fourteen maintainers' sections north of Miami, including those of the former and present General Chairmen.

The former General Chairman was Mr. R. P. McGee, who served as such from March 1943 to July 20, 1947, when he was succeeded by the present General Chairman, Mr. J. E. Dubberly. During Mr. McGee's occupancy of Section No. 3, approximately 15 track miles of rail was relaid on that section in 1945 and approximately 28.5 track miles in 1947, and during Mr. Dubberly's occupancy of Section No. 5 subsequent to 1944, approximately 2 track miles of rail was relaid in 1946, all under the same conditions that existed in the present claim, yet neither of them ever claimed he was entitled to leading maintainers' rate of pay for the time the signalman and assistant signalman in question were working with the rail relaying gang on his section, nor did any of the other maintainers on the fourteen sections except the present claimant and one other in 1948. The 1948 claim was not progressed beyond local conferences. That record of performance under the cited rules denotes proper understanding of the rules and refutes the present claim.

It cannot be said that anything in the new agreement that became effective April 1, 1948 could constitute justification for the instant claim for Rule 1 (b) of the January 1, 1938 Agreement, which was superseded by the April 1, 1948 Agreement, defined a leading maintainer in exactly the same language as does Rule 1 (c) of the April 1, 1948 Agreement, the only difference between them being the inclusion in Rule 1 (c) of the following sentence:

"However, the number of employees so supervised shall not exceed a total of four (4) at any time."

It is conclusively clear, from the plain wording of Rule 1 (c) and the understanding of the Rule by the former and present General Chairmen and their fellow maintainers, that this claim is without merit and should be denied.

All of the matters cited and relied upon by the Carrier insofar as they relate to the case as handled on appeal on the property have been discussed with the Employees.

(Exhibits not reproduced).

**OPINION OF BOARD:** The instant claim concerns request that Claimant be compensated at the Leading Maintainer's rate when required to lead, direct and when held responsible for work performed by Signalmen and Assistant Signalmen in alleged violation of Rule 1 (c).

The effective Agreement bears date of April 1, 1948, however, it has since been amended.

The record is clear that for a period of some 26 days the Claimant here directed and was to a substantial degree responsible for the work of a Signal-

man and an Assistant Signaller working on the section to which he (the Claimant) was regularly assigned and classified as a maintainer.

The Organization asserts the performance of the duties in question clearly constituted leading maintainer's work the same as though those directed were maintainers and assistant maintainers and that the elapsed time involved amounted to regularly assisting within the meaning of Rule 1 (c).

Respondent contends that Rule 1 (c) is not controlling; that Claimant was not acting as a leading maintainer, directing and supervising the work of maintainers and assistant maintainers within the contemplation of the cited rule and that the Claimant was not "regularly assisted" as required therein.

The Respondent points out that Claimant's questioned duties concerned working with a signaller and an assistant signaller and that Rule 1 (b) provides that only a leading signaller and not a maintainer is entitled to the higher rate when leading or directing signallers and assistant signallers.

It is further contended that the practice complained of has existed for a long period of time, without abrogation, covering past contract periods.

Rule 1 (b) and Rule 1 (c) read as follows:

"(b) Leading Signaller

A signaller working with and supervising the work of one or more signallers, with or without their assistants and helpers, or a signaller who is required to supervise a portion of the work of a gang under the direction and instructions of a foreman, shall be classified as a leading signaller. However, the number of employees so supervised shall not exceed a total of four (4) at any time."

"(c) Leading Maintainer

A maintainer regularly assisted by and held responsible for the work of one or more maintainers, with or without their assistants or helpers, and who is regularly assigned to a section or plant, shall be classified as a leading maintainer. However, the number of employees so supervised shall not exceed a total of four (4) at any time."

Respondent further contends that this Board in Award 4871 overruled this Organization on the same issue presented here. In this connection the Organization counters with the assertion that there, (Award 4871) a different factual situation existed and that an entirely different rule was interpreted involving a carrier other than the one that is a party hereto.

An examination of that Award, in regard to its applicability here, reveals that while the board general principle enunciated there is sound, rules there involved contained language not included in Rule 1 (b) or 1 (c).

The Agreement before the Board provides (Rule 1 (c)) in clear and unambiguous language when and under what conditions a maintainer shall be entitled to the rate of pay of a leading maintainer.

Since the parties have so specifically provided by a negotiated rule, this Board cannot properly extend the coverage thereof. A sustaining award would have this effect.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record, and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.