Award No. 5768
Docket No. SG-5784

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

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 the Carrier violated the Signalmen's Agreement when it arbitrarily changed a long established practice by supplementing bulletins advertising new positions and vacancies in maintenance territories to include the requirement that "The successful applicant will be required to reside in the town designated as the home station."

EMPLOYES' STATEMENT OF FACTS: The record and history of this dispute are substantially revealed in the correspondence covering this claim as it was handled on the property. Accordingly, the correspondence is reproduced herewith with the understanding that the Brotherhood is reproducing the Carrier's correspondence as record only and this is not to be construed as the Brotherhood's acceptance of the Carrier's statements:

"Holly Hill, Fla.
June 27, 1950.

Mr. C. B. Cargile, F E C Railway,
Superintendent Comm and Signals,
St. Augustine, Florida.

Dear Sir:

Your Bulletin No. 1249, dated June 23, 1950, advertising vacancy for a Helper on Section #2 with headquarters at St. Augustine.

You state in this bulletin that the successful applicant will be required to reside in the town designated as the home station.

Your bulletin does not comply with paragraph (c) of Rule 8 of the current agreement.

I trust that you will correct this bulletin and make it comply with paragraph (c) of Rule 8, of the working agreement.

Yours truly,

/s/ J. E. Dubberly
General Chairman—B.R.S. of A."

copy: T H Gregg

man agreed that in order to efficiently fulfill the responsibilities of his position an employe subject to call under Rule 10 should be required to reside at a location from which he would be able to report at his home station tool house in a reasonable time, and stated that in his opinion such a location would be one from which the employe would be able to report at his tool house within the 30 minutes for which he would be compensated under Rule 8 (c). This suggestion was reasonable, and the Superintendent of Communications and Signals was willing to consent to it as a matter of cooperation, but the General Chairman, for the completely baseless reasons stated in his letter of September 12, 1950 (Item No. 8, Carrier's Statements of Facts), withdrew it.

4. The right of the Railway to require employes subject to call to live at their home stations having been recognized in Rule 10 of the applicable agreement, that requirement may be modified under the Railway Labor Act only through the process of negotiation. In local handling the General Chairman suggested a modification that would reasonably meet the requirements of the service. The Railway was willing to consent to it but the Employes withdrew, and now ask the Board to abrogate Rule 10 altogether by an award which would permit Maintainers and their Helpers, regardless of the responsibilities of their positions and the consequences to the Railway's operation, to live where they choose whether or not it is within reasonable calling distance of stations, thereby obtaining a condition they could not gain through negotiation. This Board is not empowered by the Railway Labor Act to do what the Employes ask, or as stated by the Third Division in its Opinion in Award 2202:

> ". . . For us to hold otherwise would be to place the Division in the position of making agreements for the parties a matter clearly outside of our jurisdiction."

See also Third Division Awards 1586, 1684, 2612, 2656, 2734, 2765 and 3992.

For the reasons stated the Employes' claim should be dismissed for lack of jurisdiction or denied for lack of merit.

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 employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Dispute here concerns charge by the Organization that Carrier violated the currently effective agreement in unilaterally and arbitrarily changing existing practices by placing the following provision in all bulletins concerning positions:

> "The successful applicant will be required to reside in the town designated as the home station."

The Organization asserts that Rules 8 (c), 10 and 40 are or will be placed in jeopardy if this requirement is maintained or continued.

Rule 8 (c)—Calls—provides that employes called without prior notice will be allowed not more than thirty minutes between the time called and the time required to report at a specified place.

Rule 10—Subject to Call—requires all employes subject to call to report to the wire chief or chief dispatcher when they will be absent and not available.

Rule 40—Telephones—prescribes conditions under which the Carrier or the individual employe will bear the expense of a telephone.

It is contended that the institution of the residence requirement had never, prior to the present instance, been placed in a bulletin and that the past practice of the Carrier in permitting employes to live away from their home station is now controlling and binding. It is asserted that the protection and benefits of the seniority will be nullified if this practice is changed or discontinued.

The Respondent takes the position that Rule 11 which reads as follows:

> "Employes will be assigned a designated headquarters which will be considered their home station."

permits the designation of headquarters which is likewise the home station of the employes working therefrom and that Rule 10 contractually requires employes be readily available for call outside of their regular assigned hours.

It is further asserted that Rule 18 of the Rules and Instructions for the Government of Communications and Signals Department Employes which in pertinent part reads:

> "All employes must . . . reside wherever required . . ."

is not inconsistent with any provision of the effective agreement.

Rule 11 of the agreement, while having the effect of designating the headquarters and home station of employes, does not specifically require an employe to reside therein. The authority of the Carrier to impose this restriction then, must of necessity stem from its inherent prerogatives which have not been abridged or contracted away by the terms of the effective agreement.

The Carrier unquestionably has the right to promulgate and enforce any rule or requirement that does not nullify or conflict with a rule of the negotiated agreement.

Rule 18 of the above mentioned Rules and Instructions does not nullify or conflict therewith. This operating rule (Rule 18) is clear and without ambiguity.

An individual thus accepts employment subject to the operating rules of the Employer.

The Organization's contention that the past practice of the Respondent in not requiring an employe to reside at his home station has, because of its duration, achieved the status and standing of a rule, is in this particular instance without merit.

All employes knew of its existence. The fact that it has in the past been dormant does not in itself render said operating rule presently ineffective. The failure of the Company to bring the rule into play apparently inured to the benefit of the employes.

There is no valid ground for objection if Operating Rule 18 is interpreted and applied in a manner that would require an employe to reside in a locality that would enable him to report within thirty minutes after being called, as proposed by the Respondent.

While a different rule and another carrier was involved in Award 3992 the following quoted portion of the opinion therein is equally relevant here:

> ". . . It is true that the Agreement does not specifically require a signal maintainer to live at or near his headquarters. We think that the assignment of a headquarters inferentially requires it. But whether it does or not, the contract being silent on the subject, it is the province of management to require it. . . ."

". . . The operation of the railroad being the function of management, and there being no Agreement provision limiting its action with respect thereto, its decision that signal maintainers must live at or in proximity to assigned headquarters is controlling."

For the stated reasons the claim is without merit.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

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.