

Award No. 10123
Docket No. SG-9709

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**SOUTHERN RAILWAY COMPANY AND THE CINCINNATI,
NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al.:

1. That Messrs. J. B. Nussman and R. A. McMichael, Signal Foremen, and all other signal employees assigned to or working in the respective signal gangs where no camp cars and a cook are furnished (in accordance with the agreement) be allowed actual and necessary expenses during their assigned work week, and/or days of employment, effective May 7, 1956, and thereafter so long as camp cars and cooks are not furnished for the use of the gangs in accordance with the provisions of the agreement.

2. That a minimum allowance of five (5) dollars be paid to each signal employe as an estimated expense for each day of employment, beginning May 7, 1956, where no expense form is filed and the actual expenses are unknown, to cover necessary expenses incurred during the period that no camp cars and cooks are provided, less any expenses that may be paid by the Carrier for meals and/or lodging, until both camp cars and cooks are provided.

3. That the Carrier furnish camp cars and cooks for all signal gangs, not so equipped, in accordance with the agreement and the practice in effect at the time of the agreement. (Carrier's File SG-9811.)

EMPLOYEES' STATEMENT OF FACTS: In December of 1953, Bulletin No. 317, the Carrier established a Signal Gang at Chattanooga (Citico), Tenn., without camp cars and cook.

At the time the Signal Gang was established the Carrier would not permit camp cars of any craft to be located at the Citico Yards while the construction was under way. The Brotherhood did not protest the Signal Gang being established without camp cars and cook, even though it was not in accordance with the Signalmen's Agreement; however, this was not intended to establish

and no camp cars are furnished. In fact, the men do not want camp cars because they prefer to live at home. They reside at their headquarters point, and it would be foolish, indeed, to insist that they stay on camp cars.

In addition, there is attached hereto, and made a part hereof, copy of Bulletin No. 289, issued by the Signal and Electrical Superintendent at Charlotte, N. C., on April 19, 1949, marked Carrier's Exhibit "A", showing that vacancies in a signal gang were bulletined with headquarters at Knoxville, Tennessee, and that no camp cars or cook were provided. Also attached hereto, and made a part hereof, marked Carrier's Exhibit "B", is copy of Bulletin No. 290, issued by the Signal and Electrical Superintendent at Charlotte, N. C., on May 6, 1949, assigning signal forces to the vacancies created by Bulletin No. 289. Thus, signal forces bid in, and were assigned, to the positions, knowing that they would not be furnished camp cars or a cook. Thus, not only signal employees but the Brotherhood has long since conceded that there is no basis for the demand here made.

That the practice at the time the camp car rule was revised, effective February 16, 1948, was not to furnish all signal forces with camp cars and cook, is further evidenced by affidavits attached hereto, and made a part hereof, made by Signal and Electrical Department supervisory forces.

It is thus obvious that there is no basis whatsoever for the claim which the Brotherhood is here attempting to assert. It is not only not supported by the plain language of the rule, but it is not supported by the practice in effect throughout the years with respect to furnishing camp cars and cooks.

Furthermore, there is no provision within the four corners of the Signalmen's Agreement in evidence supporting the Brotherhood's contention that a minimum allowance of \$5.00 be paid to each signal employe, as an estimated expense, for each day of employment, beginning May 7, 1956. Thus, the demand here made by the Brotherhood is nothing more than that the Adjustment Board establish a new rule or working condition for Signalmen. That the Board has no authority to grant such a rule is well-recognized.

All the Claimants not having been named, and the Brotherhood not having effected compliance with the specific terms of the Agreement in attempting to assert claim on behalf of unnamed persons, that part of the claim should be dismissed by the Board for want of jurisdiction.

Claim on behalf of two named Claimants should be denied.

All evidence submitted in support of the Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right to reply thereto when apprised of its contents.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims are primarily based on the contention that the Carrier violated Rule 54 of the current agreement when (1) it established in December 1953, and thereafter (until June 22, 1956) maintained a Signal Gang with fixed headquarters at Chattanooga, (Citico) Tennessee, but without camp cars and cook; and (2) it established in September 1955, and thereafter (until November 2, 1956) maintained a Signal Gang with fixed headquarters at Greenville, South Carolina, but without camp cars and cook.

Rule 54 of the Agreement between the Carrier and the Brotherhood effective February 16, 1948 deals with Camp Cars, and the pertinent portion of said Rule is that "Present practice with respect to furnishing camp cars to be continued."

The basic question presented is—what was the prevailing practice in February, 1948 with respect to furnishing camp cars which the Carrier and Brotherhood agreed shall be continued? The employees maintain that the parties intended that the arrangement contemplated by the provisions of a prior Rule 45 in effect from December 1, 1941 until replaced by said Rule 54 was to be maintained. In that connection the employees point to the portions of former Rule 45 which provide as follows:

"Construction gangs shall be furnished with good comfortable and sanitary camp cars such as are customarily furnished forces of this character. As and when present cars are given general overhauling, bathing facilities will be furnished for each outfit that is equipped with bathing facilities; they will be provided with sufficient means of ventilation and air space."

The Carrier challenges these claims on three grounds, viz:

(a) That they were not presented within sixty days of the alleged occurrence as required by Article V of the Agreement of August 21, 1954.

(b) That the claimants are not named as purportedly required by Article V of the August 21, 1954 Agreement.

(c) That it was not the uniform practice of the Carrier to furnish camp cars and cook to all signal gangs.

The defense of late filing lacks merit. The Signal Gang established at Chattanooga in December 1953 remained in existence until June 22, 1956. The Signal Gang established at Greenville, South Carolina in September 1955 was abolished on November 2, 1956. These claims were submitted to the Carrier on May 4, 1956. We think that if there was a violation of the Agreement as claimed, it was of a continuing day to day nature during the existence of the respective Gangs, and consequently the instant claims were timely filed.

The Carrier's contention that the claimants are not named or identified also lacks support, at least in respect of two employees who are specifically named. Hence we are required to determine this case on the merits.

The record indicates that in some instances prior to February 1948, Signal Gangs were established without camp cars and cooks at Lexington, Kentucky, Charlotte, North Carolina, and Chattanooga, Tennessee. At numerous other times and places some parts of signal forces were assigned without camp cars. While these last mentioned forces apparently did not constitute a Signal Gang, it is evident from the evidence submitted by the Carrier that the number of instances preceding the adoption of Rule 54 in which camp cars were not furnished Signal Gangs were such as to indicate that the "present practice" contemplated by Rule 54 did not in all cases require that camp cars be furnished. The record further shows that in some instances since February 1948 in addition to those cited in the instant case, camp cars were not furnished Signal Gangs. Examples of the latter situation are found at Knoxville, Tennes-

see, in May 1949; Tuscaloosa, Alabama in November 1950, and Lexington, Kentucky, in August 1, 1953.

A reasonable interpretation of the facts and circumstances shown of record is that the practice on this property with reference to camp cars and cooks for Signal Gangs before and since February, 1948 has varied according to the requirements of the service. In some cases men were assigned to a headquarters point, no camp cars were furnished and expenses were paid by the Carrier when the men were on duty away from headquarters. In other cases cars were made available to a gang, but the men were responsible for meals and other living expenses. In other cases where gangs were required to do considerable moving around, camp cars and cooks were provided by the Carrier.

In the instant cases the gang headquarters were established without camp cars and cooks at Chattanooga (Citico) Tennessee in December 1953 and at Greenville, South Carolina, in September 1955. The Carrier's action was protested in April 1956. We are constrained to hold that in the instances complained of the Carrier's action was not inconsistent with Rule 54 or past practice on the property.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1961.