Award No. 11659
Docket No. SG-11291

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

— EASTERN LINES —

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it failed to properly compensate Assistant Signalmen I. C. Huyett, S. Hutchinson, J. H. Brewer, and J. J. Daniels, at the top Assistant's rate of pay (eighth period) following a force reduction in January and February 1958 which reduced them from the Signalman class to the Assistant Signalman class.

(b) The Carrier now pay Assistant Signalmen I. C. Huyett, S. Hutchinson, J. H. Brewer and J. J. Daniels the difference between the respective Assistant rates they are now being paid and the eighth period Assistant Signalman rate commencing with the date they were reduced from the Signalman class to the Assistant Signalman class and continuing until they are again promoted or upgraded to the Signalman class. [Carrier's file 132-5-1]

EMPLOYES' STATEMENT OF FACTS: Messrs. I. C. Huyett, S. Hutchinson, J. H. Brewer, and J. J. Daniels, were employed by the Carrier on various positions in the Assistant Signalman class on the Eastern Division Seniority District. Each of these employes had less than 4 years in the Assistant Signalman class and were being paid the various applicable step rates of the Assistant Signalman class corresponding with their length of service in the Assistant Signalman class.

On April 1, 1957, Messrs. Hutchinson and Daniels were promoted to positions in the Signalman class, and on May 16, 1957, Messrs. Huyett and Brewer were likewise promoted to positions in the Signalman class. These employes were promoted to positions in the Signalman class, having qualified for promotion in less than the required eight basic training periods of service as Assistants.

(1) Contrary to the Employes' allegation there is no rule in the Signalmen's Agreement, effective October 1, 1953, prohibiting the complained-of handling;

(2) Article V, Section 2 of the Signalmen's Agreement expressly provides for the compensation paid the claimant Assistant Signalmen involved in this dispute; and,

(3) In the absence of a contract provision supporting the complained-of handling, your Board has repeatedly held that long established past practices are enforceable to the same extent as the provisions of the contract itself.

and in conclusion respectfully reasserts that the claim of the Employes in this instance is wholly without merit or support under the current Signalmen's Agreement and should, for the reasons stated herein, be either dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

OPINION OF BOARD: Claimants were Assistant Signalmen. Before each of them completed their eight basic training periods, they were each promoted to Signalmen's position and they served as Signalmen in excess of sixty days up to about 11½ months. As a result of a force reduction on March 17, 1958, each Claimant was returned to Assistant Signalmen's position. Carrier thereafter paid each Claimant the rate of Assistant Signalman in the step or period applicable to each Claimant. They all received credit for the time they filled Signalmen's position.

Section 7(c) of Article I of the Agreement reads as follows:

"(c) At the expiration of the eight basic training periods as assistant signalman or assistant signal maintainer he will be offered promotion if a position to which he is entitled is open. He may, if no position is open, continue as assistant signalman or assistant signal maintainer until it is possible to promote him to a position to which he is entitled."

Part of Section 1 and all of Section 2 of Article V reads as follows:

"Section 1. Assistant Signalmen, Assistant Signal Maintainers:

1st 130 day period	$1.575 per hour
2nd 130 day period	1.599 " "
3rd 130 day period	1.623 " "
4th 130 day period	1.647 " "
5th 130 day period	1.671 " "

6th 130 day period	1.695	"	"
7th 130 day period	1.719	"	"
8th 130 day period	1.743	"	"
Signal Helpers	1.551	"	"

NOTE: The rates named in this Section are to be adjusted in accordance with any subsequent general increases and/or decreases in rates applied to positions covered by this Agreement.

Section 2.

Employes promoted to the position of assistant signalman or assistant signal maintainer shall be paid the starting rate for the first 130 day period, with an increase of 2.4 cents per hour each 130 day period thereafter until they have completed 8 of such 130 day periods."

Petitioner contends that Claimants are qualified Signalmen and that since they have filled the position of Signalmen, they are entitled to pay equivalent to the 8th period of Assistant Signalmen.

In support of this position, petitioner cites Award 4004 (Carter) of this Division. The record upon which that award was rendered showed that the Claimant had a seniority date as Assistant Signal Maintainer of February 11, 1946. He was promoted to Signal Maintainer on August 25, 1946 and he continued to fill that position until March 23, 1947 when he was displaced by a senior employe. The Claimant, thereupon, returned to his position as Assistant Signal Maintainer which he held until April 12, 1947, when he was again returned to the position of Signal Maintainer. During the 18 day period, from March 23, 1947 to April 12, 1947, which he worked as an Assistant Signal Maintainer, he was paid a rate equivalent to the period to which Carrier said he was entitled as an Assistant Signal Maintainer. Claimant contended that he was entitled to the 8th period Assistant Signal Maintainer rate.

We sustained the claim and said:

"It is evident to us that two methods exist under these rules by which an assistant signal maintainer might qualify as a signal maintainer; first, by serving a four year apprenticeship as an assistant signal maintainer at the step rates of pay provided, and second, by being promoted to signal maintainer before serving four years as an assistant signal maintainer and qualifying by rendering three months' competent service in the position. Surely, if an assistant signal maintainer qualified by one of the two prescribed methods, he would not have to qualify by the other. Having once qualified as a signal maintainer, the step rates of pay no longer apply to him because the reason for their application has been entirely removed. If no position is open for a qualified signal maintainer, he can continue as an assistant signal maintainer at the highest assistant's rate of pay. Rule 5 (c) spells this out as to assistant signal maintainers who have completed their four years' apprenticeship when no signal maintainer's position is open. An assistant signal maintainer who qualifies by promotion and three months' competent service is in an

identical position with the former and is entitled to the same rate of pay under the Agreement."

Carrier argues first, that Award 4004 does not apply in this dispute because the Promotion Rule in the Agreement considered in that case "provided that after an employe had satisfactorily performed service on a Signal Maintainer position for a period of 3 months he thereby irrevocably established his qualifications and status as a Signalman." The Promotion Rule of the Agreement now before us gives the Carrier the right to disqualify an employe after he has been promoted to a Signalman's position for 60 days.

Under Section 3 of Article IV of the present applicable Agreement, an employe who accepts a promotion and fails to qualify within sixty (60) days may return to his position. This Section reads as follows:

"Section 3.

> An employe accepting promotion to positions and classifications A or B and failing to qualify in sixty (60) days may return to his former position. If he fails to qualify after sixty (60) days he may displace the employe with the least seniority rights, whose position he is qualified to fill in the class and on the district from which promoted."

The record shows, without refutation by the Carrier, that each of the Claimants served more than 60 days as a Signalman. At no time did the Carrier disqualify any of the Claimants as a Signalman. They were transferred to the position of Assistant Signalmen only because of a force reduction.

Carrier's argument on this point is without merit.

Carrier further contends that Claimants were promoted "to meet the demand therefor brought about by the establishment of the four Signal Extra Gangs." This was required because of the installation of additional traffic signals. It does not matter for what purpose or for what reason the Claimants were promoted to position of Signalmen. Whether the promotions were permanent or temporary is not material to the issue. The fact is that vacancies arose and the Claimants were so promoted by the Carrier.

The record does not support Carrier's contention that Claimants' abilities and qualifications were inadequate or that they were under short-term training. While they were Signalmen, they performed the work required of them. There is nothing in the record to show that they were supervised or that their work was of inferior quality.

Carrier relies rather strongly on the above quoted Section 2, Article V of the Agreement. This Section merely says that employes who are promoted to the position of Assistant Signalmen are paid the rate of the first 130-day period and thereafter they receive an increase of 2.4 cents an hour every 130-day period thereafter. This does not alter the fact that an Assistant Signalman may be promoted to a Signalman before the expiration of the 8th period, and it does not say that when a promotion is so made that the employe who is later reduced to an Assistant Signalman because of work force reduction shall receive the rate of the period to which he is entitled and not the highest Assistant Signalman rate.

We agree that we must interpret the provisions of the applicable Agreement as written and we have done so. There is nothing in Section 2, Article V which supports Carrier's contention.

Carrier also argues that this claim should be denied because of past practice. In the letter dated July 8, 1958 from Carrier's Assistant to the Vice President addressed to Petitioner's General Chairman, Carrier states that it has been the practice for more than fourteen years to credit an Assistant Signalman with service as Signalman in computing the 8th basic training period. "It has, however, never been this Carrier's practice to allow the maximum Assistant Signalman's rate of pay to an Assistant Signalman who returns to service as Assistant Signalman after being promoted to Signalman prior to completing the 8 basic training periods and whose combined service as Assistant Signalman and Signalman is not the equivalent of seven 130-day basic training periods, and the foregoing practice has existed without prior complaint or claim from either the employes or the Brotherhood representatives."

Petitioner calls attention to this letter in its Ex Parte Submission and says that the "assertion of Mr. Comer is not factually correct because this Carrier settled an identical claim in behalf of Assistant Signalman W. E. Fogal on the Los Angeles Division in January, 1958." The issue in the Fogal claim was identical with the issue now before this Board. Further, in its Ex Parte Submission, Petitioner says about Carrier's claim of past practice that: "There is no support for its position whether by specific reference in any rule or rules nor by any understandings or past practice related thereto."

The mere assertion that there has been a past practice is not sufficient. Petitioner specifically denies that such a past practice did exist and cites the settlement of the Fogal claim in refutation of such past practice. Carrier does not deny that the Fogal claim, which was based upon the same facts as the issues involved in this dispute, was so settled. Carrier merely says that an isolated payment does not establish a past practice or agreement. We agree with this general position. But the fact remains that in this record, Carrier has failed to establish by substantive evidence that a past practice did exist.

Our opinion and Award 4004 applies to this claim. We see nothing palpably wrong with that Award. An Assistant Signalman may qualify as a Signalman either by completing eight basic training periods as provided in Section 7(c) of Article I or by being promoted to a Signalman position before completing such eight basic training periods and remains qualified in that position. Having qualified while filling a Signalman's position, the step rates no longer apply. On an assignment to an Assistant Signalman's position due to a force reduction he is entitled to the Assistant's highest rate of pay.

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 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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1963.