Award No. 13384
Docket No. SG-13209

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GREEN BAY AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Green Bay and Western Railroad Company:

(a) That the Carrier violated the current Signalmen's Agreement when it changed the compensation of the Signal Maintainers from the monthly rate to the hourly rate, effective May 1, 1961.

(b) That Signal Maintainers' James B. Van Natta, Norman E. Parizek, and Maurice O. Harmon positions to be restored to the monthly rate of $544.19 and be compensated the difference between the monthly rate of $544.19 and that received at the hourly rate.

EMPLOYES' STATEMENT OF FACTS: The positions in question were monthly-rated from the time they were first established until the Carrier unilaterally changed them to hourly-rated positions, effective May 1, 1961. This unilateral action by the Carrier violated the current Signalmen's Agreement, especially Rules 54 (a) and 70.

Without consulting the Brotherhood, Superintendent Maintenance of Way C. H. Halvorson wrote a letter, dated April 19, 1961, to Supervisor Signal & Communications L. J. Rohr advising him that, effective May 1, 1961, "your Signal Maintainers will be changed to the hourly rate instead of the monthly rate, * * *" This letter is attached here to as Brotherhood's Exhibit No. 1.

In view of this violation of the Agreement by the Carrier, Local Chairman Norman Parizek, in a letter dated April 27, 1961, filed a claim on behalf of the employes affected for the difference in the hourly rate and the monthly rate of $544.19 a month. See Brotherhood's Exhibit No. 2.

Under date of May 2, 1961, Supervisor of Personnel R. H. Bangert advised Local Chairman Parizek that the claim was denied. See Brotherhood's Exhibit No. 3.

and there is no rule in the Agreement which prohibits the change from an hourly to a monthly rate, or vice versa, as long as the other conditions applicable to the rate apply.

The organization base their contention on alleged violations of Rules 54(a) and 70. Rule 54(a) has reference to an employe who does not return to his home station daily. Instructions have been issued and the signal maintainers are returning to their home station daily. With the exception of the first four days in the month of May, 1961, our Signal Maintainers have been and continue to return to their home station daily. When this new arrangement went into effect in May, 1961, one signal maintainer failed to understand the instructions properly and did not return to his home station during the first four days. This is a matter of Company records and we challenge the Employes to prove otherwise, and therefore Mr. LeBaron is in error when he stated in his letter of May 5, 1961, that signal maintainers do not return to their home station daily. Rule 54(a) is only applicable to employes who do **not** return to their home station daily, so obviously it has no application in connection with this claim because our Signal Maintainers **do** return to their home station daily. Rule 70 likewise has no application with respect to this dispute because no established positions were discontinued nor were any new ones created. We had the same number of established positions of Signal Maintainers after May 1, 1961, as we did before May 1, 1961, and no change was made in title of any position or assigned territory of any position.

OPINION OF BOARD: On May 1, 1961 the Carrier unilaterally changed Signal Maintainers from payment on a monthly basis to payment at an hourly rate. The Organization protested this action as a violation of Rules 54 and 70 of the parties agreement which state in part as follows:

> "Rule 54 (a) An employee assigned to the maintenance of a territory who does not return to his home station daily will be paid the applicable monthly rates referred to in Rule 53 which shall constitute compensation for all services rendered except as hereinafter provided in this rule."

> "Rule 70 (ESTABLISHED POSITIONS) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement."

The Organization argues that Claimants do not return to their home stations daily and must therefore be paid in accordance with Rule 54 (a). In addition, it alleges a violation of Rule 70 in the Carrier's discontinuance of this job on a monthly-paid basis and its establishment on an hourly paid basis.

The Carrier takes the position that it has the right to arrange work assignments as it sees fit; that Rule 53 provides an optional basis for payment either on a monthly or on an hourly paid basis; and that no negotiations are required in changing the basis for payment. The fact that an employe does return home daily as is now the case eliminates the need for payment on the monthly basis since hourly paid employes are equally protected when staying away overnight by Rule 19. In this case, the Carrier continues, the employes have been returning home daily, and therefore Rule 54 (a) is no longer controlling.

Under consideration is the Carrier's right under the parties' Agreement to change the method of payment of Signal Maintainers from a monthly rate to an hourly rate. The present method of payment is authorized by the language of Rule 53 which incorporates the monthly $497.77 rate and the hourly $2.406 rate as the basic rates of pay which ". . . shall remain in effect until and unless changed in the manner provided by the Railway Labor Act."

Rule 54 amplifies as to which employes are entitled to the monthly rate, specifying "An employe assigned to the maintenance of a territory who does not return to his home station daily . . ." This Board has held that it is not necessary for the employe to stay away from his home station every day, and has upheld a claim where the employe did not return home on an average of two nights a month. (4480).

However the facts in the instant case are different. Here the Carrier acknowledged that employes on many occasions in 1960 did not return home daily. But it argues that pursuant to a change in the workweek from a six day week to a five day week, there was no longer any need for an employe to remain away from home. The one employe who did stay away following the Company's introduction of the change did so under a misunderstanding, and of his own volition.

The essential question is whether the Company's change from a six day workweek to a five day workweek, which enabled it to free the Claimants from the requirement of staying away from home and thus took them from under the protection of Rule 54, constitutes a discontinuance of an established position for the purpose of reducing the rates of pay under Rule 70. We find that it does not.

Although a loss of earnings to these Signal Maintainers may have resulted from the Carrier's action, Rule 70 was not violated. There was no discontinuance of one position and the creation of a new one under a different title, Rule 70 is intended to prohibit the Carrier from arbitrarily creating new, lower rates unauthorized by the parties in their collective bargaining negotiations. It should not be construed as a freeze upon the Company's methods of operations to restrict efficient operations when, as here, the parties anticipated that Signal Maintainers under other than stay-away-from-home conditions would be working at an hourly rate. Contrary to the Organization's contention, the Carrier's intention was not to evade the "application of rules in this agreement", but rather, to the contrary, to come within another portion of Rule 53 which permitted payment on an hourly rather than on a monthly basis. Once the Carrier had eliminated the need for these employes to stay away from home, it was free of the restrictions for monthly payment in Rule 54 (a) and able to invoke the alternative method of payment agreed to by the parties in Rule 53.

Should the Signal Maintainers work demands necessitate a return to the practice of remaining away from home stations overnight then a return to the monthly basis of payment would be similarly proper.

The Agreement under discussion in Award 10955 (Dolnick) relied upon by the Organization, did not have a provision authorizing a monthly rate under limited conditions as in Rule 54 (a) instant, nor did it have a previously negotiated dual rate for the classification in dispute as in Rule 53 instant. Accordingly it can not be held to be controlling.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.