

Award No. 14647
Docket No. SG-13036

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company:

On behalf of Signal Maintainer F. L. Conant for the difference in pay he received as an hourly-rated Signal Maintainer and the amount of pay he would have received as a monthly-rated Traveling Maintainer from May 1, 1960, until such time as the Carrier establishes the position now held by Signal Maintainer F. L. Conant as a monthly-rated Traveling Maintainer's job, in accordance with Rules 105 and 601 of the current Signalmen's Agreement.

EMPLOYES' STATEMENT OF FACTS: On May 27, 1960, General Chairman LeRoy Harley addressed a letter to Division Engineer P. A. Cosgrove in which he requested the Signal Maintainer position with headquarters at Decatur, Illinois, be assigned on a monthly basis in accordance with Rules 105 and 601 of the Signalmen's Agreement.

In reply to Mr. Harley, in a letter dated June 8, 1960, Division Engineer Cosgrove declined the General Chairman's request. This letter is identified as Brotherhood's Exhibit No. 1.

In a letter dated June 28, 1960, Local Chairman S. C. Arnold filed a claim on behalf of Signal Maintainer F. L. Conant with headquarters at Decatur for the difference in pay received as a Signal Maintainer and what he would have received as a Traveling Maintainer. The claim is for time worked after May 1, 1960 until the Carrier assigns the position on a monthly basis. This letter is identified as Brotherhood's Exhibit No. 2.

On July 5, 1960, Division Engineer Cosgrove addressed a letter to Local Chairman Arnold in which he denied the claim. This letter is identified as Brotherhood's Exhibit No. 3.

On August 29, 1960, Local Chairman Arnold wrote Mr. Cosgrove that his decision was unacceptable and would be appealed. This letter is identified as Brotherhood's Exhibit No. 4.

CARRIER'S STATEMENT OF FACTS: On November 28, 1958, Carrier issued notice abolishing position of Signal Maintainer with headquarters at Ramsey, Illinois, advising affected employees of changes to be made in their territorial work assignments, effective December 5, 1958.

Claimant F. L. Conant, who occupied the position of Signal Maintainer with headquarters at Ramsey, Illinois, was given the option to accept a position of Signal Maintainer with headquarters at Decatur, Illinois, or exercise displacement in accordance with Rules 405 and 409 of the Signalmen's Agreement. He elected to take the position with headquarters at Decatur, which encompassed some of the territory formerly maintained by him on his previous assignment. He was assigned a company-owned truck in addition to a motor car, to enable him to maintain his assigned territory.

On May 18, 1959, the General Chairman of the Brotherhood of Railroad Signalmen appealed a grievance to Carrier's Manager of Personnel, alleging that the territory assigned to Signal Maintainer Conant and other employees affected made it impossible for such employees to properly maintain the newly assigned territories because of the distance involved. The Carrier declined to make changes in the territorial assignments and advised the General Chairman that the changes complained of were made in accordance with the provisions of the agreement. The matter was discussed in conference with the General Chairman on August 13, 1959, and no further action was taken by the Organization until December 6, 1960, when a claim was appealed to Carrier's Manager of Personnel in favor of F. L. Conant, alleging that because of the changes made in the assigned territory of the position he occupied, it was improperly classified. Carrier declined the claim.

The agreement between the parties dated August 1, 1958, is by reference made a part of this Statement of Facts.

OPINION OF BOARD: On December 5, 1958, Carrier abolished the position of Signal Maintainer, headquarters at Ramsey, Illinois, and made changes in the territorial work assignments of certain affected employees. The occupant of this Signal Maintainer position, F. L. Conant, accepted the position of Signal Maintainer with headquarters at Decatur, Illinois. This assignment included some of the territory previously maintained by him when he served out of the Ramsey headquarters.

Claimant Conant contends that Carrier violated the Signalmen's Agreement by failing to assign the Signal Maintainer position with headquarters at Decatur on a monthly-rated basis rather than the hourly-rated basis upon which it was assigned. He maintains that the extensive territory of 180 miles to which he was assigned and the fact that he could not return to his home station each day constituted the two conditions which classify his position as that of Traveling Maintainer according to Rule 105. As a Traveling Maintainer, he asserts that under Rule 601 he is entitled to be paid on a monthly basis.

Carrier requests that the claim be barred under the time limit provisions of Article 5 of the National Agreement of August, 1954. It asserts that the present claim was involved in a previous claim which was declined by Carrier's highest officer on June 29, 1959, and was not appealed within the nine-month period that expired March 29, 1960. The specific act which gave rise to the prior claim was the abolishment of Mr. Conant's position at Ramsey as a

result of territorial changes made on other signal maintainer positions. Carrier regards the instant claim as a resubmission of this claim for which it alleges Claimants are seeking a different remedy.

The record discloses that the first claim to which Carrier refers arose from changes in territory in which the grievance was that additional work and hardships imposed upon the remaining Signal Maintainers made it impossible for them to perform their duties with safety and efficiency. The instant claim is for the purpose of securing monthly-rated compensation based upon the contention that the work performed is that of Traveling Maintainer. We find the two claims are distinct and separate. Since the present claim was filed within the time limits set forth in Article 5, it is properly before this Board.

Rule 105 sets forth the conditions for classifying a position as that of Traveling Maintainer. It reads as follows:

"Traveling Maintainer: A signal maintainer assigned to the duties of the maintenance of a territory including isolated facilities and who does not return to his home station each day."

The record reveals that Claimant Conant did not return to his headquarters every night. Although there is some disagreement as to how frequently he remained away, Carrier grants that there had been instances in which he did not return to his station. It gives as the reasons for his remaining away from his headquarters overnight emergencies and his personal convenience. The record, however, does not support these explanations. Mr. Conant, therefore, met one of the qualifications under Rule 105 for the classification of the position as that of Traveling Maintainer: that he does not return to his home station each day.

The other condition necessary to classify his position as Traveling Maintainer is that the territory includes isolated facilities. The size of the assigned territory estimated by Carrier as 124 miles and by Claimant as 180 miles was sufficiently extensive that despite Carrier's furnishing Claimant with a highway motor truck and a rail motor car, he was unable on certain days to comply with his instructions on maintaining signals and still return to his headquarters the same day. Under these circumstances, we find that he was "A signal maintainer assigned to the duties of the maintenance of a territory including isolated facilities. * * *"

By virtue of this condition and the fact that Claimant does not return to his home station each day, his position is classified as Traveling Maintainer as defined by Rule 105. Accordingly he is entitled to payment of a Traveling Maintainer on a monthly basis as prescribed by Rule 601.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14647, DOCKET-SG-13036 (Referee Engelstein)

Compliance with this award would have the effect of changing the Agreement by expunging the key phrase from Rule 105.

Claimant, a Signal Maintainer, contended that he was entitled to the monthly rate of pay of a Traveling Maintainer under the provisions of Rule 105 which, as it now clearly reads, establishes two independent conditions to qualification thereunder, namely, the Maintainer must (1) be assigned "... to the duties of the maintenance of a territory including isolated facilities and ..." (2) "... not return to his home station each day."

The award reasons that the "isolated facilities" condition in the rule is satisfied simply because claimant "was unable on certain days to comply with his instructions on maintaining signals and still return to his headquarters the same day." This reasoning ignores completely the fact that the "isolated facilities" condition is stated conjunctively in the rule and must be independently satisfied.

The award creates a new rule worded the same as rules appearing in Signalmen's Agreements on various other Carriers (as an example, see the rule in Award 13384, which contains no "isolated facilities" provision).

This Board has no jurisdiction to change the rules of an agreement, and as stated in our Award 11700 (Engelstein), "... We cannot ignore the restrictive phrase ..." in this rule.

The emphasis which the award places on the size of claimant's territory is both irrelevant and misleading; for the record shows, without contradiction, that claimant's district is smaller than two other regular maintainers' districts on the same division and smaller than many regular maintainers' districts on other divisions of Carrier's lines. There is no suggestion in the rule that the mere size of a district has any bearing on whether particular territory is isolated; but even if size were controlling, the showing in this record would

be conclusive on the point that claimant's district did not contain isolated territory. The showing that many other signal maintainer districts are larger than claimant's district and the absence of any showing that a district of this particular size has ever been found to be isolated because of its size would certainly be conclusive on the point.

The ruling with respect to Article V of the National Agreement of August 21, 1954, is erroneous. See Award 10329 (Begley), among many others.

We dissent.

G. L. Naylor
R. A. DeRossett
C. H. Manoogian
H. K. Hagerman
W. M. Roberts