

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20927
Docket Number SG-20776

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) Carrier violated the current agreement between the Brotherhood of Railroad Signalmen and the Chicago North Western Transportation Company when on November 22, 1972, Carrier called signal maintainer at Sussex, Mr. L. Drahos, account 482's extra and way freight extra stopped for signal 738, instead of the leader maintainer P. R. Singletary.

(b) Carrier should now be required to compensate Mr. Singletary for amount of four and one-half hours (4 1/2) at the leader signal maintainer's rate, the time spent by Mr. Drahos, in locating the signal trouble. /Carrier's file: 79-8-114/

OPINION OF BOARD: On November 22, 1972, Carrier called a Signal Maintainer (instead of the Leading Signal Maintainer) for overtime work in their territory. Claimant insists that such action constituted a violation of Rules 2(d) and 16(a) as well as a January 16, 1941 Memorandum of Understanding - and past practice.

Rule 2(d) defines a "Leading Signal Maintainer" and Rule 16(a) provides that, unless registered absent, regular assignees will be called concerning emergencies in the operation of the railway.

The 1941 Memorandum of Understanding has specific reference to Mason City; and as such, may not control this dispute. Awards 20801, 20803, and 20804 considered similar claims by the Organization, and sustained them because of their geographic origin, and the specific wording of the "Mason City" document. As noted, however, those Awards would not appear to be precedential to our consideration, which deals with a territory not including Mason City.

Moreover, the Employees seem to recognize the problems inherent in reliance upon the 1941 Memorandum, because they urge that said document was the basis for the origination and continuation of the practice on other territories.

Because the Memorandum deals specifically with one geographic area, it may be argued that the parties intended different results in other areas. However, notwithstanding that contention, we feel that it would be

appropriate to consider past practice to ascertain if, in fact, Carrier has uniformly applied a similar application in other areas. But, as has been expressed in countless Awards of this Board, it becomes the Organization's obligation to demonstrate such a practice to the satisfaction of the Board under the rather stringent requirements expressed in those Awards.

In this regard we have noted a reference to an asserted practice at Madison, Wisconsin, however, we fail to note a showing of specifics beyond that. In fact, during the handling of the matter on the property, Claimant states: "This committee could cite cases throughout the system". However, it failed to do so. Carrier has denied the existence of a past practice. Because of the limiting nature of the 1941 Memorandum of Understanding - we are inclined to feel that strong evidence of a uniform past practice is required to overcome the implication that the parties intended to limit its applicability to the geographic area specified therein.

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 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 claim is dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.