NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21130
Docket Number SG-21059

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Chesapeake and Ohio Railway Company
((P.M. District)

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the former Pere Marquette Railroad:

Claim No. 1

(a) The Carrier violated the current Agreement between the Railway and its Communication Department Employes, particularly Rules 209 and 216, when it refused to allow reimbursement of meal expenses for March 19 and 20, 1973.

(b) The Carrier allow Communication and Signal (C&S) Maintainer R. K. Wilkins his expenses as claimed for March 19 and 20, 1973.
(Carrier's File: SG-345 General Chairman's File: 730427-123)

Claim No. 2

(a) Carrier violated and continues to violate the current Communication Agreement, particularly Rules 1, 209, 216, 701(a) (1), and 920, when on October 5, 1973 Communication and Signal (C&S) Maintainers were refused meal expenses starting with September, 1973 expenses. Such expenses were submitted on C&O/B&O Form X-28 in proper manner as had been done and paid for at least the last seventeen (17) years.

(b) Carrier now reimburse C&S Maintainers Jack W. McKillop, C&O ID No. 2484272, and Ronald F. Fuller, C&O ID No. 2484430, for the following months and amounts: McKillop: September - $10.25, October - $6.20 and November - $9.05; Fuller: September - $45.45, October - $47.30 and November - $42.70.

(c) Carrier further pay Claimants interest on their October and November amounts due them at the rate of 1 percent, per month, compounded monthly, commencing with date of November 16, 1973 for October expenses, and date of December 16, 1973 for November expenses, such dates Claimants should have been reimbursed in accordance with Rule 216.
(Carrier's File: SG-368 General Chairman's File: 73-74-123
73-74-123-7)

Claim No. 3

(a) Carrier violated and continues to violate the current Agreement and its intent negotiated on behalf of Carrier's Communication Employes, particularly Rules 1, 209, 216, 701(a) 1, and 920, when Communication and Signal (C&S)

Maintainers named below was notified by Carrier officers on November 9, 1973 and December 6, 1973 to the effect that certain meal expenses submitted on C&O Form X-28 for period shown below would not be allowed as in the past. As a result of this arbitrary action.

(b) Carrier now reimburse Claimants Jack W. McKillop, C&O ID No. 2484272, and Ronald F. Fuller, C&O ID No. 2484430, meal expenses claimed on their December X-28 report filed with and refused by Carrier while working away from their assigned headquarters, such expenses claimed thereon: McKillop - $10.55; Fuller - $41.25.

(c) Carrier further pay Claimants interest on the above amounts at the rate of 1 percent per month, compounded monthly, commencing with date of January 15, 1974, the date such expenses should have been paid in accordance with Rule 216.

(Carrier's File: SG-378 General Chairman's File 74-6-123)

Claim No. 4

(a) Carrier violated and continues to violate the current Communication Agreement No. 2, particularly Rules 1, 103, 209, 216, 701(a) (1), 920 and Addendum No. 11, when on or about March 11, 1974 Division Engineer Davis refused payment and/or reimbursement of meal expenses for months of January and February 1974.

(b) Carrier now reimburse Communication & Signal Maintainers Jack W. McKillop, C&O ID No. 2484272, for meal expenses submitted for months of January ($12.20) and February ($8.50); and Ronald F. Fuller, C&O ID No. 2484430, for meal expenses submitted for months of January ($51.60) and February ($42.45), such expenses submitted by both employes in proper manner on Carrier's Form X-28 for months claimed herein.

(c) Carrier further pay Claimants interest on the above amounts at the rate of 1 percent per month, compounded monthly commencing with date of February 15, 1974 for January expenses and date of March 15, 1974 for February expenses, the dates such expenses should have been paid in accordance with Rule 216.

(Carrier's File: SG-385 General Chairman's File: 74-15-123)

OPINION OF BOARD: The issue presented in this case is whether the Claimants, who are Communication and Signal (hereinafter C&S) Maintainers employed in Canada by the Carrier, are covered by the Communication Department Agreement, as contended by the Employes, or by the Signal Department Agreement, as contended by the Carrier. If their coverage is as asserted by the Employes, the Claimants are within the purview of Rule 209 of the Communication Agreement and reimbursement of their noon-day meal expenses is required. However, if the Carrier is correct, the Claimants are covered by the Signal Department Rule 209 which expressly excludes the cost of noon-day meals from reimbursement.

The record in this dispute is voluminous; however, a study of the whole record indicates that the answer to the basic issue in question can be readily derived from a comparative analysis of the following rules from the two agreements: Sunday and Holiday work (Rule 206 of each Agreement); Holiday Pay (Rule 206½ of each Agreement); leaving and returning to Home Station Same Day (Rule 209 of each Agreement); Gang Headquarters (Rule 217 of each agreement) and Seniority Districts (Rule 405 of the Signal Department Agreement and Rule 408 of the Communication Department Agreement).

The aforementioned Signal Department Rules make specific references to Canadian employes and Canada while the Communication Department Rules contain no such references. Rules 206 and 206½ of the Signalman's Agreement list holidays in both the United States and Canada for which a qualified employe will receive pay while the comparable rules in the Communication Agreement only list United States' holidays. Similarly, Signal Department Rule 217 designates Ridgetown, Ontario as the gang headquarters for the Canadian seniority district gang and three Michigan locales as gang headquarters for United States seniority district gangs; in contrast the corresponding rule in the Communication Agreement designates only Grand Rapids, Michigan as a gang headquarters. The only reasonable inference to be drawn from the inclusion of Canadian references in the Signalman's Agreement and the omission of such references in the Communication Agreement is that the Communication Agreement was intended to cover employes in the United States while the Signalman's Agreement covers employes in both the United States and Canada. This conclusion is further supported by the Employes' admission that C&S Maintainers in Canada, including the Claimants, are covered by the holiday pay and seniority rules of the Signalman's Agreement (Rules 206½ and 405 respectively) and not by the corresponding rules of the Communication Agreement.

Wholly apart from the above analysis, Rule 405 of the Signalman's Agreement and Rule 408 of the Communication Agreement, both of which define the seniority districts in which they apply, are particularly informative in delineating the employe coverage of the respective Agreements. Signal Department Rule 405 specifically establishes a seniority district called the Canadian Division as well as three seniority districts in the United States and further provides that "seniority rights of employes will be restricted to one district." On the other hand, Rule 408 of the Communication Agreement provides only for a seniority district "composed of that part of the Pere Marquette District West of the Detroit and St. Clair Rivers" which excludes all of the Canadian division territory. Clearly, the establishment of the foregoing seniority districts by the two agreements shows that the Signal Department Agreement applies to employes in both the United States and Canada while the Communication Agreement is limited solely to employes in the United States. Furthermore, if it had been the parties' intent to include the Canadian Division or any employes thereof within the provisions of Rule 408 of the Communication Agreement, the parties could have done so when the 1953 Agreement was written or when the 1967 revisions were made. However, it is apparent on the face of the Agreements that the parties did not choose to do so.

The Employes concede that the Maintainers employed in Canada were covered by the Signalman's Agreement up to the execution of the Communication Agreement in 1953 and the foregoing shows that the record is replete with evidence establishing that these employes are still covered by the Signalman's Agreement and not by the Communication Agreement. Accordingly, Rule 209 of the Signalman's Agreement which expressly prohibits the reimbursement for noon-day meals applies in this case.

This finding is not altered by the Employes' contentions: (1) that the Scope Rule of the Communication Agreement includes the present Claimants, and (2) that a past practice allowing reimbursement for noon-day meal expenses has been established.

The Employes assert that the parties' intent to have the Communication Agreement apply to C&S Maintainers employed in Canada is reflected in the following portion of the Scope Rule of that agreement:

> "This agreement covers rates of pay, hours of service and working conditions of all employes specified in Rules 101 to 105 inclusive ... including employes in the United St tes classified under Rule 103(b) of this agreement...."

The Employes note that the above passage expressly includes employes in the United States. It is then argued that, since the Canadian Maintainers were covered by the Signalman's Agreement prior to the execution of the Communication Agreement in 1953, the reference to employes in the United States is clear evidence of the parties' intent for the communication Agreement to cover C&S Maintainers in both Canada and the United States. However, this construction of the quoted language is unacceptable since the Employes fail to indicate any rules of contract interpretation which would support a construction requiring the express inclusion of United States employes to carry with it an implied inclusion of Canadian employes. On the contrary, the express provision of the Agreement including employes in the United States indicates that a comparable provision concerning Canadian employes would be required before the coverage of the Communication Agreement could be extended to such employes. Moreover, it must be noted that when parties intend to cover certain employes by an agreement, they generally include provisions expressly accomplishing the intended coverage and, at the very least, use methods less obscure than the indirect method asserted by the Employes in the instant case.

Apart from this position, the Employes also contend that the Carrier's Canadian employes have received noon meal expenses over a long period of time and that such past practice has just recently been terminated. In this regard, the record reflects that there have been cases in the past where a supervisor on his own initiative authorized the reimbursement of meal expenses by the Carrier; however, the record also reflects that these decisions have been made by employes who do not have the authority to bind the Carrier at a policy-making

level. Prior Board Awards have recognized that actions taken by an operating officer do not constitute a binding interpretation of the Agreement and that such an interpretation can only result from the actions of the General Chairman and the designated officer of the Carrier. Third Division Awards 18064 and 18045. The Employes have failed to offer any evidence to show that an authorized officer of the Carrier has interpreted the two agreements to sanction the reimbursement of noon-day meals for Canadian employes, and thus the Employes' evidence falls far short of showing a firmly established past practice which could prevail in this case. Even if a past practice had been established, prior Board decisions have held that unambiguous provisions of the Agreement prevail over conflicting practices. Third Division Awards 17916 and 13994. Based on the foregoing and consideration of the whole record, it is clear that Rule 209 of the Signalman's Agreement was intended to cover the Claimants in this case. Consequently, their claims must be denied.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.