

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Case No. 1

(a) Carrier violated the parties' Schedule Agreement, as amended, particularly Rules 55 and 99 and Memorandum of Agreement of March 8, 1948 as evidenced by past practice, when on September 24, 1986, Carrier issued job bulletins 1504-1506 showing headquarters of Gang 103 at Waukegan, Illinois; abolished Gang 103 effective close of work Monday, October 27, 1986 under bulletin 1507 dated October 17, 1986; issued job bulletins 1509-1511 dated October 28 and bulletin 1514 dated November 13, 1986 showing headquarters of Gang 103 at Chicago Heights, Illinois; and under bulletin 1517 dated November 26, 1986 abolished Gang 103 effective close of work Friday, December 5, 1986.

(b) Carrier now be required to allow Claimants named in Exhibit A mileage allowance and travel time pursuant to Rules 71 and 72 which represents mileage allowance and travel time required for Claimants to travel from Joliet, Illinois to the temporary headquarters point shown on the job advertising bulletins. G.C. file 86-49-EJ&E. Carrier file RS-18-86.

Case No. 2

(a) Carrier violated the parties' Schedule Agreement, as amended, particularly Rules 55 and 99, when on February 3, 1987, it issued Job Bulletins 1522 and 1523 showing temporary headquarters of System Test Gang 104 at Chicago Heights, Illinois when such headquarters should have been bulletined as Joliet, Illinois or Gary, Indiana in accordance with past practice.

(b) Carrier now be required to allow J. F. Manning and R. W. Fisher mileage allowance and travel time from Joliet to Chicago Heights for each work day Claimants were required to report to Chicago Heights during the period involved herein pursuant to Rules 71 and 72. Test Gang 104 was abolished effective end of tour of duty Tuesday, February 24, 1987. See Bulletin 1530 dated February 18, 1987.

(c) Carrier further violated the parties' Schedule Agreement, as amended, particularly Rules 55 and 99, when on February 18, 1987, it issued Job Bulletins 1528 and 1529 showing headquarters of System Test Gang 105 at Chicago Heights, Illinois.

(d) Carrier now be required to allow C. D. Bradley and R. W. Fisher mileage allowance and travel time pursuant to Rules 71 and 72 for each day Claimants worked and required to report to Chicago Heights instead of Joliet or Gary." G. C. Files 86-49-EJ&E - 1. Carrier file RS-04-86.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This case is the consolidation of two separate Claims. The gravamen of both Claims is whether the Carrier violated a longstanding practice going back more than three decades, when it temporarily established signal gangs and designated headquarters for these gangs at points other than Joliet, Illinois, or Gary, Indiana.

In the first Claim, the Carrier established five temporary positions, which together constituted Gang 103, and designated the Gang's Headquarters at Waukegan, Illinois. On October 27, 1986, the Carrier abolished Gang 103 pursuant to advance notice properly issued on October 17, 1986. In advertisements dated October 28, 1986, the Carrier established four temporary positions on Gang 103 with headquarters at Chicago Heights, Illinois. The temporary positions constituting Gang 103 were abolished on December 5, 1986, again in accord with proper advance notification.

Claim No. 2 arose when the Carrier temporarily established (Test) Gang 104 (two positions) with its headquarters at Chicago Heights, Illinois, on February 3, 1987. The bulletin announced that although the jobs were temporary, the Carrier expected the gang endure for approximately seventy days. However, on February 18, 1987, the Carrier notified the incumbents of the Gang 104 positions that the Gang would be abolished on February 24, 1987. Simultaneous with the abolishment notice, the Carrier advertised seven permanent positions constituting Gang 105. Five of the seven jobs were headquartered at Joliet while the Carrier designated Chicago Heights as the headquarters for two positions.

At the onset, this Board overrules the Carrier's two procedural objections. The first Claim was timely filed within sixty days of the date the

alleged violation occurred which was the formal establishment of a headquarters point at other than Joliet or Gary. Contrary to the Carrier's argument, the Rule 80(a) sixty day limitation period did not begin to run when the Carrier issued the bulletins advertising signal gang positions with a designated headquarters point. The alleged violation occurred when employees were actually assigned to a position at a purportedly improper headquarters point. In the second Claim herein, we find that the Organization properly appealed the Division Engineer's denial. Since the Division Engineer received a copy of the letter appealing his denial, he obviously knew that the Organization had rejected his decision. Fourth Division Award 1745.

Rule 99 of the applicable Agreement perpetuates working conditions and practices which are not inconsistent with other provisions in the Agreement. Thus, Rule 99 operates to elevate a past practice to the status of an Agreement Rule provided the Organization proves the existence of an open, continuous, and mutually recognized method of assigning headquarters points for temporary positions on signal gangs. After reviewing the record, we find that the Organization has shown that for the most part, signal gang headquarters were maintained at either Joliet or Gary but there was some notable deviations from the practice. These deviations prevent us from finding a past practice.

Prior to 1954, the headquarters were routinely placed at two different points in accord with the March 8, 1948 Agreement governing gangs' transition from outfit cars to truck transportation. The Agreement initially designated Griffith, Indiana, and West Chicago, Illinois, as the headquarters for the two regularly assigned permanent signal gangs. However, less than two years later, in correspondence dated January 20, 1950, the Carrier's Manager of Personnel notified the Organization's General Chairman that the Carrier was not willing to restrict its right to alter the headquarters of signal gangs and did not interpret the March 8, 1948 Memorandum of Agreement as permanently designating the headquarters at Griffith and West Chicago. In 1954, the headquarters for the permanent gangs were moved to Joliet and Gary. Thus, the March 8, 1948 Agreement did not forever fix the headquarters for signal gangs. Also, in April, 1979, the Carrier bulletined permanent signal gang positions with headquarters at West Chicago without any objection from the Organization. Thus, the Organization has not met its burden of proving an uninterrupted past practice of designating the headquarter points at Joliet and Gary. More importantly, in June, 1988, the Organization served a Section 6 notice on the Carrier which would place some time restrictions on the changing of headquarters points. The Section 6 notice evinces the parties recognition that the prevailing practice did not prohibit the Carrier from changing headquarters.

While we are denying this Claim, we note that the Carrier may not intentionally change headquarters as a subterfuge for transferring the cost of travelling between a headquarters point and a work site to signal employees. Within the confines of this record, there is insufficient evidence showing that the Carrier was deviously manipulating the rules to achieve this improper motive. Most Claimants lived closer to their temporary headquarters than they did to Joliet.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.