AWARD NO. 2
CASE NO. 2

PUBLIC LAW BOARD NO. 4187

PARTIES ) BROTHERHOOD OF RAILROAD SIGNALMEN
TO )
DISPUTE ) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

(CLAIM A)

"Claim on behalf of Signal Maintainer R. R. Davis, headquartered at Campbellstown, Ohio:

(A) The Carrier violated the rules of the Signalmen's Agreement, in particular Rule 314, when the Carrier declined to pay Mr. Davis his actual necessary expenses for the month of April 1985 as submitted on form 11017.

(B) The Carrier now pay Mr. Davis his actual necessary expenses of $52.40 for the month of April 1985 for the violation cited in part (A)." (Carrier File: SG-FTW-85-13; BRS File: 6852-NW)

(CLAIM B)

"Claim on behalf of Signal Maintainer F. W. Williams, headquartered at Martinsville, Virginia, assigned hours 7:00 AM to 4:00 PM; meal period 12:00 Noon to 1:00 PM, rest days Saturdays, Sundays and Holidays, that:

(A) The Carrier violated the rules of the Signalmen's Agreement, in particular Rule 314, when the Carrier declined to pay Mr. Williams his actual necessary expenses for the months of May and June, 1985, as submitted on form 11017.

(B) The Carrier now pay Mr. Williams $66.10 for the month of May, and $68.25 for the month of June for the violation cited in part (A)." (Carrier File: SG-SH-85-1; BRS File: 6854-NW)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Essentially, resolution of the dispute before the Board involves interpretation of the extent of agreement that exists between the parties as a result of their entering into Rule 314 as part of the consolidation of separate schedules of work rules agreements

following the merger of the Pittsburgh and West Virginia Railway Company (the "PWV"), The New York, Chicago and St. Louis Railroad Company (the "NKP"), The Akron, Canton and Youngstown Railway Company (the "ACY"), The Pittsburgh and West Virginia Railway Company (the "PWV"), The Virginian Railway Company (the "VGN"), and The Wabash Railroad Company (the "WAB") into the Norfolk and Western Railway Company (the "N&W" or the "Carrier").

Rule 314, which became effective February 1, 1984, reads:

> "When employees are away from their assigned home station or when they are away from their assigned territory on Company business, they will be allowed their actual necessary expenses for meals and lodging if meals and lodging are not provided by the Company or if the boarding cars to which employees are assigned by bulletin are not available."

The Organization maintains that Rule 314, supra, is applicable to all employees covered by the Agreement, and thereby to Claimants, who were working as Signal Maintainers away from their assigned home station, and who claim they are therefore entitled to actual necessary expenses for a noon meal.

It is the position of the Carrier that not all employees are covered by Rule 314, and, in particular, that Signal Maintainers are excluded from coverage. In this regard, the Carrier asserts that Rule 314 was patterned after Rule 20 as it appeared in the former N&W Rules Agreement. This former N&W Rule read:

> "Rule 20. (a) When employes are away from their assigned home station or when they are away from their assigned territory on Company business they will be allowed their actual necessary expenses for meals and lodging if meals and lodging are not provided by the Company or if the boarding cars to which employes are assigned by bulletin are not available.
>
> (b) Expenditures of any other kind which an employe is instructed to incur will also be reimbursed.
>
> Note: This rule does not intend payment of the noon meal for hourly rated signal maintainers or assistant signal maintainers when working on their regularly assigned territory." (Underlining by this Board)

The Carrier says the language of the two rules (Rule 314 and former Rule 20) are identical with the exception of item (b) and the Note of Rule 20 which were deleted.

Carrier asserts that in consolidating the work rules of the various agreements as they existed on the separate properties it was mutually agreed that the Note to Rule 20, supra, was not needed since the parties were in agreement that Signal Maintainers and Assistant Signal Maintainers would not be allowed expenses for noon meals, as had been application of the rule on the

former N&W.

In presenting its position to this Board, the Carrier directs attention to a meeting between the parties on July 5, 1984, which meeting Carrier says was for the purpose of attempting to resolve claims that had been submitted following implementation of Rule 314. In this connection, the Carrier offered a memorandum from one of its labor relations officers, Mr. J. A. Abbatello. This memorandum, dated July 16, 1984, reads:

> "Meeting held on July 5, 1984, with C. J. Talley [Director Engineering-Signals], R. F. Hess [Assistant Manager Labor-Material], V. J. Sartini [General Chairman, Organization] and J. A. Abbatello [Assistant Director Labor Relations] to discuss the interpretation of Rule 314. Sartini contends that Rule 314 provides for lunch meals for Signal Maintainers and Assistants when they are unable to return to their 'home station' for lunch. Carrier contends that this rule does not apply to Signal Maintainers and Assistants. These employees 'carry noon day lunches.' Rule 314 was adopted from Rule 20 in NW Agreement. Rule 20 had a notation regarding application to Signal Maintainers and Assistants. It was agreed between Sartini, Talley and Abbatello that the notation was not needed since we were in agreement that Signal Maintainers and Assistants would not be allowed noon meals. Present former WAB and VGN employees would continue to receive allowances for noon meals. Sartini contends that he understood that Rule 314 applies to all employees including maintainers. Talley and Abbatello fail to understand his position since we all were involved in negotiating the rule and agreed that the notation in old Rule 20 was no longer needed. Attempts are being made to resolve the matter."

The Carrier also offered the following memorandum, dated July 24, 1984, from its Director Engineering-Signals, Mr. C. J. Talley:

> "This memorandum concerns meeting held in the Labor Relations Office at Roanoke, 10:00 A.M., Thursday, July 5, 1984, for discussion on the application of Rule 314 as it applies to signal maintainers. In attendance were BofRS General Chairman V. J. Sartini, Assistant Director Labor Relations J. A. Abbatello, Jr., Director Engineering-Signals C. J. Talley, and Assistant Manager Labor-Material R. F. Hess.
>
> It was pointed out to the General Chairman that Signal Maintainers were requesting reimbursement for their noon day meal, under Rule 314, which was not in accordance with the Rule or the intentions of the Rule. During negotiations of the consolidate[d] Agreement, which this writer has been involved in since 1968, the Railway continuously took the position that reimbursement of the noon day meal for Signal Maintainers while working on their assigned territory would not be considered. Sig-

nal Maintainers on the former Virginian Railway and former Wabash Railway do receive reimbursement for their noon day meal, under their respective working Agreement, but former NW, NKP, AC&Y, and P&W Va employees are not and the Railway vigorously opposed expanding this systemwide.

Rule 314 was negotiated from NW Rule 20 which included a note reading[:] 'This rule does not intend payment of the noon meal for hourly rated signal maintainers or assistant signal maintainers when working on their regularly assigned territory.' When new Rule 314 was being finalized, V. J. Sartini and J. A. Abbatello agreed that inclusion of this note in new Rule 314 was not necessary since Rule 20 had been in effect for over 25 years and [the] intent of the Rule was clear without further interpretation. While this writer objected to omission of the note, I withdrew the objection with the understanding that Signal Maintainers, other than those now receiving reimbursement, would not be reimbursed for cost of their noon meal while working on their assigned territory. Messrs. Sartini and Abbatello both concurred in this understanding.

General Chairman Sartini indicated, at the July 5, 1984 meeting, that he did not remember this discussion but did agree that the writer had always objected to payment of noon meals for maintenance employees working on their assigned territory."

In regard to the above memoranda making reference to payments allowed Signal Maintainers on the former VGN and WAB, the Carrier in its ex parte submission to this Board said:

"[P]ayments of 'noon meal' expenses/allowances have been erroneously paid to signal maintainers on the former VGN and WAB Railroads. The new rule as worded does not provide for expenses for noon meals either. The continuation of the erroneous payments to VGN and WAB signal maintainers was a commitment made by the Carrier based on a quid pro quo that the new rule would not apply to signal maintainers who did not remain overnight on Company business at locations other than the employee's headquarters. When these particular type claims commenced, the Carrier intentionally did not discontinue payment of 'noon meal' expenses to former VGN and WAB signal maintainers due to the previous referenced commitment."

The Organization's General Chairman, Mr. Sartini, maintains that at no time during negotiations had he or the Organization stated or agreed that Signal Maintainers and Assistant Signal Maintainers were not to be covered by Rule 314. Rather, the Organization says that the term "employees" as used in Rule 314 was intended to be all inclusive and that the Rule was equally applicable to Signal Maintainers and Assistants as with all other

represented Signal Department employees. Furthermore, the Organization says that the Carrier recognized the intent of Signal Maintainers being subject to Rule 314 by having denied the instant claims on the basis that Claimants were working on their regularly assigned territory, and not in the contention that Claimants were not covered by Rule 314.

The Organization maintains that the Carrier forfeited former N&W Rule 20, and in particular the Note which had excluded Signal Maintainers and Assistant Signal Maintainers, when it agreed to Rule 314 on a consolidated basis, and that the Carrier cannot now properly seek to have this Board give it something that it did not obtain at the bargaining table. It says that Rule 314 stands alone on its language and supports its position that any employee who is away from their home station (headquarters) or off their assigned territory on company business is entitled to reimbursement of actual necessary expenses for meals and lodging, if not furnished by the Carrier.

In another argument to this Board, the Carrier urges that it is significant that on December 21, 1974 the Organization had sought to change the then existing rules in pursuance of a Section 6 Notice under the Railway Labor Act so as to establish a rule that would read as follows, but that it (the Carrier) had resisted such change:

> "(e) Employees will be paid actual expenses when away from their assigned headquarters point. Employees will be paid actual meal expenses when away from assigned headquarters point during assigned meal periods provided in this agreement. Employees will be paid actual lodging expenses when away from their assigned headquarters point overnight. Reimbursement of meal and lodging expenses paid under this agreement shall be made at least bi-monthly."

The Organization rebuts such argument by saying the fact they had served such notice only shows that they had intended to seek a change in any rule which did not expressly provide for payment of actual expenses to all employees when away from their assigned headquarters point. It asserts this happened with renegotiation of Rule 314.

In giving consideration to the overall record, this Board is mindful that the general practice in collective bargaining is to reduce contracts to writing so as to make sure that understandings reached are clearly recorded in terms of mutual accord. The Board is also cognizant that an oral agreement may be held to be as fully binding as a written one, and would be the case in this instance if the parties could be shown to have actually reached mutual understanding, but had not reduced such understanding to writing in negotiating Rule 314.

This Board likewise recognizes that ordinarily past practice of the parties in applying a disputed provision of a contract is of great importance to resolution of a claim. However, where, as

here, diverse rules and practices of contracts are consolidated, past practice may not necessarily be sufficiently relied upon to hold that the consolidated rule had an established and recognized application.

Here, there is basic disagreement as to the presence of a mutual understanding, and there is no substantive probative evidence to support the Carrier contention that the express stipulations of the Note to former Rule 20 did not expire with termination of Rule 20 but instead carried forward to Rule 314, and that Rule 314, as with former Rule 20, was intended by both parties not to be applicable to Signal Maintainers or Assistant Signal Maintainers working on their assigned territory.

There is no doubt the Carrier representatives were anxious to have Rule 314 exclude Signal Maintainers and Assistant Signal Maintainers. It is equally apparent that the Organization wanted Rule 314 to cover all employees. It had served formal notice to accomplish such a desire. Further, it is apparent from memoranda of conference as introduced by Carrier, albeit the relevancy and materiality of such documentation must be viewed as self-serving, that there was concern on the part of the Carrier about the need to have the Note to former Rule 20 continue if there was to be no question but that Signal Maintainers and Assistant Signal Maintainers were not to be covered by Rule 314.

In many respects, Carrier would have this Board presume that it was fully aware of what had transpired at the bargaining table and have the Board make a credibility determination as to what the parties may or may not have said or otherwise intended relative to an issue which had been in dispute. To do so, absent probative evidence, would compel this Board to rely on speculation and conjecture. Such action would not constitute sound basis for a responsible determination.

In the circumstances, this Board has no recourse but to set aside the divergent views of the parties and construe Rule 314 as written and give the words used by the parties their common, ordinary meaning.

Rule 314 clearly provides that "employees" will be allowed their actual necessary expenses for meals and lodging when away from their assigned home station or when they are away from their assigned territory. The term, "employees," is a collective noun. It must be read as expressly including all employees covered by the collectively bargained agreement, including, in the instant case, Signal Maintainers and Assistant Signal Maintainers.

The word "or," as used in Rule 314, is disjunctive, rather than conjunctive. This word may not be read, as Carrier would have the Board hold, as stipulating that when either one condition or the other is present, Rule 314 has no application to employees. It does not stipulate that necessary expenses will be allowed only when employees are both away from their home station and away from their assigned territory.

Since the record before the Board indicates that Claimants were away from their home station when claiming actual necessary expenses for the noon meal, albeit Claimants reportedly remained on their assigned territory, this Board has no alternative but to hold that such claims are supported by Rule 314. The claims as presented to this Board will, therefore, be sustained.

AWARD:

Claims sustained.

Robert E. Peterson, Chairman
and Neutral Member

W. L. Allman, Jr.
Carrier Member

V. M. Speakman, Jr.
Organization Member

Roanoke, VA
October 9, 1987