

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20990
Docket Number SG-21122

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: {Brotherhood of Railroad Signalmen
(Seaboard **Coast** Line Railroad Company)

STATEMENT OF CLAIM: Claims of the General **Committee** of the Brotherhood
of Railroad **Signalmen** on the Seaboard Coast Line
Railroad Company:

Claim No. 1:

(a) Carrier violates the current **Signalmen's** Agreement **as**
amended, particularly Rule **19(d)** when it declines to pay Signal Maintainer
S. S. Stone for one hour at his pro rata rate of pay **as** preparatory time.

(b) Carrier should **now be required to compensate** Signal Main-
tainer S. S. Stone for one hour's pay at the pro rata rate of pay for each
of the **following days: November 3, 20, 22, 30, December 1 and 16, 1973.**
[Carrier's file: 15-19(74-1) E3]

Claim No. 2:

(a) Carrier violates the current Signalmen's Agreement, **as**
amended, particularly Rule **19(d)**, when it declines to pay Signal Maintainer
L. H. Hightower for one hour at his pro rata rate of pay as preparatory
time.

(b) Carrier should now be required to compensate Signal Maintain-
er **L. I. Hightower** for one hour's **pay** at the pro rata rate of pay for
November **1, 1973.** **[Carrier's file: 15-19(74-2) E3]**

OPINION OF BOARD: The operative facts in both claims are the same. Each
of the **Claimant Signal** Maintainers was **required to**
workoff his **assigned** signal maintenance territory outside of his **regular**
work period; in connection therewith, each claimed one hour's pro rata pay
as preparation time under Rule **19(d)** of the Signalmen's Agreement, **effect-**
ive July 1, 1967. The **Carrier** denied the claims, **asserting** that such claims
were not supported by Rule **19(d)** or other rules.

The pertinent rules now follow.

"RULE 18 -- Hourly Rated **Employees** Leaving Home
Station **and** Returning Same Day

"Hourly rated employees performing service requiring them to leave and return to home station the same day, **shall** be paid continuous time, exclusive of the noon meal period, **from time** reporting for duty until released at home station, whether **working**, waiting, or traveling, straight time for all straight time work, overtime for **all** overtime work and straight **time** for all time traveling or waiting on trains or buses, except that on assigned rest days and the seven designated holidays, **all** time working, waiting or traveling **shall** be at the overtime rates."

"RULE 19 -- Hourly Rated **Employees** Leaving Home
Station and Not Returning **Same** Day

"Hourly rated employees performing service which requires them to leave **their** home station and who do not return to **home** station the **same** day, will be compensated as *follows*:

(a) **All** hours **worked** will be paid for -- straight **time** for straight time hours and overtime rate for overtime hours.

• ☒ •

(d) When employees are notified or **called** to leave their home station under this or the preceding rule, before or after their regular work period, they will be allowed one hour at pro rata rate as preparation time, except this shall not apply to maintainers called to work on their assigned territory. (**Emphasis added**)

The Carrier's Submission states that Rule 19 of the parties' Agreement was Rule 18(a) of the former Atlantic Coast Line Agreement and that such Rule 18(a) became part of the parties' Agreement through the **Employees'** right to "cherry pick" the rules of the agreements **with** the former **Atlantic Coast Line Railroad Company** and the former Seaboard Air Line Railroad Company when those two carriers merged to form the Seaboard Coast Line **Railroad on July 1, 1967**. The Carrier **argues that the** intent of Rule 18(a) of the former Atlantic Coast Line Agreement, as well as the intent of instant Rule 19(d), was to pay one hour pro rata for preparation time for **employees** who did not return to their home station in the same day. Since the herein Claimants returned home in the **same** day, the Carrier contends that instant Rule 19(d) is inapplicable. **The** Carrier **also** asserts that, in searching its records for similar claims filed under either of

the former railroads' Signalmen's agreements or the current SCL **agreement**, it has found only one similar **claim** and that such claim was not appealed following its denial in December **1973**. And finally, because the text of Rule **19(d)** has been in effect since April 1, **1946** without any claims of this **type** having been progressed thereunder, the Carrier contends that this history evidences the parties' intent on what the rule **means** and also evidences a custom and practice which is now binding.

Examination of the pertinent rules demonstrates that Rule **18** is written to cover **employees** leaving and returning to home station in the same day, while, in contrast, Rule **19** is written to cover employees leaving home station and not returning in the same day. However, this does not **serve** to validate the Carrier's contention about the intent of the rules because the underlined text of Rule **19(d)** **clearly** renders **paragraph** (d) of Rule **19** applicable to "the **preceeding** rule"; this **unmistakably** refers to Rule **18** and the effect is that such **rule** requires pay for preparation time even though such **rule** has as its main subject **employees** who leave home station and return each day. **In** short, Rules **18** and **19**, when read in **con-**junction with one **another**, provide that preparation time will be paid for on the basis of an **employee** being required to work off his assigned territory outside of his **regular** work period and it is irrelevant whether he returns to his home station or not. The requirements of Rule **19(d)** are clear and unambiguous and thus the **Carrier's** allegation concerning past practice is no defense. It is so well settled as to require no citation of authority that a clear, unambiguous rule can be asserted at any time and that prior silence concerning rights under the rule will not defeat a meritorious claim. **The** claims **will** be sustained.

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 Agreement was violated.

Award limber20990
Docket Number **SG-21122**

Page 4

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.