

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

Wm. H. Spencer, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
ATCHISON, TOPEKA & SANTA FE RY. CO., EASTERN LINES**

**DISPUTE.**—"Claim that W. H. Lane should be paid at the rate of 69¢ per hour (less the 10% deduction in June and 7½% deduction in July, 1934) for all hours worked by T. J. Lawson as assistant signal maintainer, June 25 to August 1, 1934."

**FINDINGS.**—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

The parties to said dispute were given due notice of hearing thereon.

The dispute being deadlocked, William H. Spencer was called in as Referee to sit with this Division.

W. H. Lane, holding seniority rights in Class C as an assistant signalman, was laid off in a reduction of force on May 10, 1934. Of employees furloughed during June and July, 1934, on account of reduction in force, Lane was the oldest employee in point of Class C seniority.

On June 24, 1934, the Carrier created an additional assistant signal maintainer's position on Gang 8 at Lawrence, Kansas, and assigned T. J. Lawson thereto. He continued in this position until July 16 when the Carrier abolished it. On the same day the Carrier appointed Lawson to relieve H. E. Conner, a regularly assigned assistant signal maintainer on Gang 8, continuing him there until August 1, 1934. Lawson had seniority rights in Class D, but none in Class C.

At the time he was furloughed, and through the months of June and July, 1934, Lane protected his seniority rights in Class C by compliance with the provisions of Section 13 of Article III of the Agreement.

The Employee contended that under the Agreement, citing particularly Article I, Section 3 (c), Article III, Sections 1, 2, 3, 6, 13, and 18, and Article IV, Sections 1 and 5, the Carrier should have called W. H. Lane for the positions in question.

The Carrier, relying particularly on Section 5 of Article IV, contended that the Agreement did not require it to call Lane for these positions.

The Division is of the opinion that the claim is well founded and should be granted.

Section 3 of Article III provides that "seniority will be exercised only when vacancies occur or new positions are created." Standing alone, this comprehensive provision would certainly have required the carrier to have called Lane for the two positions under consideration. It remains to be seen whether other provisions of the Agreement limit this provision which is designed to protect a most important right of employees.

The Carrier contends that Section 5 of Article IV, which expressly permits it to fill certain positions without having previously bulletined them, also permits it to fill such positions without regard to the seniority rights of its employees. It will be observed that this section, while expressly limiting the duty of the Carrier to bulletin positions, does not contain any express limitations upon its duty to respect the seniority rights of employees in filling positions covered by this section. If, therefore, the section in question does limit the right of seniority, it does so by implication and not by an express provision. The Division cannot accept the view that the parties to the Agreement under

consideration intended that Section 5 of Article IV should by application limit the seniority rights guaranteed to employees by Section 3 of Article III.

AWARD

The claim sustained.

By order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,  
*Secretary.*

Dated at Chicago, Illinois, this 20th day of December 1935.