NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Claim that E. F. Mann forfeited his Signal Department seniority rights on the Tucson Division when he failed to return to service in the Signal Department prior to the expiration of his authorized leave of absence and/or for remaining out of Signal Department service more than six months in a twelve-month period."

STATEMENT OF FACTS.—E. F. Mann entered the service of the Carrier as a signalman on the Tucson Division, April 19, 1928. He requested, and was granted a leave of absence for 90 days, effective from September 11, 1935.

On September 19, 1935, the position to which Mann held assignment was discontinued, due to reduction in force. Mann did not attempt to exercise displacement rights at the time forces were reduced, as he was then on leave of absence. Under the agreement, he was not required to exercise displacement rights until 10 days after the expiration of his authorized leave of absence.

Mann did not report for service at the expiration of his leave of absence. On February 3, 1936, he reported to the Division officials, and was given investigation of his failure to report for duty prior to the expiration of his leave of absence. His record was assessed with ten demerits for overstaying leave of absence.

As a result of his failure to report for duty prior to the expiration of his leave of absence, and within ten days thereafter to exercise displacement rights, he was not permitted to displace a junior employee. He was subsequently given employment in the Bridge and Building Department as a helper; on March 23, 1936, he acquired a position as leading signalman, a position coming under the Signalmen's agreement, and was placed upon this position March 25, 1936.

An agreement between the parties bearing effective date of March 1, 1926, was placed in evidence.

POSITION OF EMPLOYEES.—When E. F. Mann failed to return to service at the expiration of his 90-day authorized leave of absence, he forfeited his seniority in the Signal Department, as per Rule 41 of the Agreement dated March 1, 1926. Rule 41 reads as follows:

"Employees may be granted leave of absence, limited, except in case of physical disability, to six months in any twelve-month period, without loss of seniority. Members of general or local committees, representing employees covered by these rules, will be granted leave of absence without unnecessary delay and without loss of seniority."

Mann further forfeited his seniority in the Signal Department when he remained out of the service six months and twelve days in a twelve-month period.

Rule 54 and its interpretation dated June 11, 1931, definitely specify how an employee, whose position has been abolished, can exercise his displacement rights. An employee who fails to comply with these provisions forfeits his seniority rights. The governing part of the interpretation of June 11, 1931, to Rule 54, reads:

"All privileges under this interpretation must be exercised within ten days from date of loss of position, except employees who are on a previously authorized leave of absence, or sick at the time of loss of position, shall be allowed ten days after date of reporting for work to exercise the privileges of this interpretation."

Under Paragraph (6) of the Interpretation of Rule 54 above quoted, Mann forfeited all privileges accruing to him under the provisions of Rule 54 when he failed to exercise his rights within ten days after his authorized leave of absence. Mann failed to comply with the provisions of this rule or its interpretation, and therefore forfeited his seniority rights in the Signal Department.

POSITION OF CARRIER.—Rule 41 of the Signalmen's current Agreement provides that employees may be granted leave of absence, limited, except in case of physical disability, to six months in any twelve-month period, without loss of seniority. The rule does not require the concurrence of representatives of the Signalmen's Organization in connection with leave of absence, the only restriction being that it must be limited to six months in any twelve-month period.

Mann reported for service as a signalman and/or signal maintainer on the Tucson Division on February 3, 1936, terminating his leave of absence, which began September 11, 1935, and which did not exist in excess of four months, twenty-three days; and upon reporting for service, and following the investigation, as result of which he was assessed ten demerits, he was entitled to resume service as either a signalman or signal maintainer. The request which petitioner has submitted to have Mann's seniority declared as forfeited, is nothing more or less than an attempt to change Rule 41 of the Signalmen's agreement, which, of course, is beyond the jurisdiction of the Board.

It is admitted Mann was absent beyond the 90-day limit of his original leave of absence; nevertheless, the Management considered this was justified to some extent by reason of the serious illness of Mann's father, and that it constituted extenuating circumstances; further, that the evidence which we have adduced by exhibits reflects that Mann was from time to time in communication with Signal Supervisor Burton by both telegraph and letter, and, in addition, put himself to the expense of telephoning Signal Supervisor Burton by long distance from St. Louis on January 25, 1936.

There are many instances of record where employees in the Signal Department have been laid off, due to force reduction, and while so laid off have been granted leave of absence, and at the expiration of said leave of absence have been unable, due to lack of seniority, to obtain work in the Signal Department under the Signalmen's Agreement, and have been allowed to work in other departments (not under the Signalmen's Agreement), and have later returned to work under the Signalmen's Agreement, after the lapse of more than six months from the beginning of said leave of absence; such employees, although they did not work under the Signalmen's Agreement for more than six months, including the time absent on leave of absence, nevertheless did not lose their seniority under the Signalmen's Agreement, and no suggestion has at any time been made by any representative of the Signalmen's Organization that such employees should forfeit their seniority under the Signalmen's Agreement.

OPINION OF THE BOARD.—The evidence of record shows that the 90-day leave of absence granted E. F. Mann at his request, expired on December 11, 1935, and that he did not report for duty prior to the expiration of the leave of absence.

Mann's failure to report for duty on or before expiration of his leave of absence resulted in forfeiture of his seniority rights. His proper seniority date should be as of the date he subsequently re-entered the service in the Signal Department as leading signalman, a position coming under the Signalmen's Agreement, on March 25, 1936.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Mann's failure to report for duty on or before expiration of his leave of absence resulted in forfeiture of his seniority rights and that his proper seniority date should be March 25, 1936, which is the date he last re-entered the service in a position coming under the Signalmen's Agreement.

AWARD

Claim sustained as indicated in the above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 9th day of September 1937.