Award No. 901
Docket No. SG-898

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Eino O. Willenius, Assistant Signal Maintainer, for loss of wages and expenses, between January 4, 1938, and March 22, 1938, account of being improperly displaced by Signal Maintainer Alvin Eshleman."

EMPLOYES' STATEMENT OF FACTS: "On January 4, 1938, the position of second trick signal maintainer at drawbridge 2.22, Cleveland, Ohio, known as Signal Section No. 1, was abolished. Mr. Alvin Eshleman, who held this position and was senior in service to other maintainers in his seniority district, and could have displaced a signal maintainer under the provisions of Rule 30, requested permission from the management to demote himself. He was granted this permission by the management and demoted himself to a position of Assistant Signal Maintainer, 93rd Street, on Signal Section No. 2. By doing this, he displaced Mr. Eino O. Willenius, the Assistant Signal Maintainer on the section, who was forced to exercise his seniority rights and take a position as signal helper."

POSITION OF EMPLOYES: "It is the position of the Brotherhood that when the position of second trick signal maintainer held by Alvin Eshleman at drawbridge 2.22, Cleveland, Ohio, was abolished on January 4, 1938, Mr. Eshleman should have been required to exercise his displacement rights in his own seniority class under the provisions of Rule 30 which reads:

> 'Rule 30. When force is reduced, an employe of a class will have the right to displace an employe of the same class with less seniority rights. An employe so displaced having no further rights in his class may displace an employe with less seniority in the next lower class, regaining seniority rights he formerly held in that class. An employe assigned to a lower class will retain and accumulate seniority in the class from which reduced.'

"It will be noted that under provisions of Rule 30, which sets forth the right of displacement, Mr. Eshleman should have been required to exercise displacement rights in his own seniority class, if he was able to do so. However, the management arranged for Signal Maintainer Eshleman to displace Assistant Signal Maintainer Willenius, a man holding a position in another seniority class.

"It will be noted from the above statement of facts that when Signal Maintainer Eshleman's position was abolished at Cleveland, he was senior in that seniority class to other signal maintainers and he could have and should have displaced a junior employe of his own seniority class as clearly provided for in Rule 30. Mr. Willenius held a regular position of assistant

his own class, but rather the application of this rule is also subject to a decision by the employe under Rule 39."

There is in existence an agreement between the parties bearing effective date of November 1, 1935.

OPINION OF BOARD: Rule 39, the meaning of which is at issue, permits an employe to demote himself to a lower class upon penalty of forfeiting his seniority rights in all classes above that one. The rule does not state what the employe's privileges are after he has demoted himself to a lower class. It is conceded that, as a result of the rule, he may bid in on vacancies or new positions in that class. May he also—which is the question in this case—exercise displacement rights? The Carrier says yes, the employes no. The rule has been in effect for less than four years, and the practices of the parties under it have been too scanty to constitute an agreed upon interpretation.

Rule 30 is the only rule specifically covering displacement. It provides that:

> "When force is reduced, an employe of a class will have the right to displace an employe of the same class with less seniority rights. An employe so displaced having no further rights in his class may displace an employe with less seniority in the next lower class . . . ."

The most natural interpretation of this language is that it spells out the only circumstances in which displacement may be made; if that interpretation is correct, the rule gives no right of displacement to an employe who demotes himself. It is true that the rights set forth in Rule 30 are not expressly stated to be exclusive; but on the other hand rights of displacement do not exist without specific contractual authority, and where this authority is granted, as in Rule 30, its grant must be deemed limited to the conditions set forth, and not impliedly enlarged unless there are persuasive reasons for reading into the rule an additional grant. The mere existence of Rule 39, which says nothing about displacement, does not of itself warrant an implied enlargement of Rule 30.

Nor does the history of these rules warrant such enlargement. The present agreement between the parties, made in 1935, supplanted an earlier agreement of 1930. In the earlier agreement, the displacement rights were much more limited. They permitted an employe, **"if no new position or vacancy is open,"** to displace **"only the employe of the same class with the least seniority rights."** And the employe so displaced could displace only the employe with the least seniority in the next lower class. Thus, when a man was laid off by force reduction he could not choose from among the positions held by men junior to him in the same class; he could take only the position held by the man with least seniority. And the man so displaced was similarly limited to but one choice.

These severe restrictions indicate that displacement, since it affects the jobs of others, has been regarded as a drastic step, to be carefully confined. It is obviously a more drastic step than bidding in a vacancy or new position, for bidding in simply means that others will not advance, whereas displacement pushes them down the ladder and leaves them worse off than before. Hence, the distinction drawn in the 1930 rule between bidding in and displacement. And hence, the propriety of concluding that Rule 39 of the present agreement was intended only to give rights of bidding in, and was not intended by implication to enlarge the displacement rights carefully spelled out in Rule 30.

When the present agreement came to be written, there were reasons for believing that the restrictions on displacement had proved in practice too severe. The Signalmen's seniority districts were extensive, sometimes ranging from 150 to 300 miles; an older man might be laid off, and the single position he was allowed to displace might be too far away or unsuited to

his capacities. It was felt that he should have a larger choice, and hence the new rule 30 permitted him to displace anyone junior to him in his class, instead of the most junior man in his class.

At the same time Rule 39 was adopted. It gave to the older men a further privilege; if none of the positions they were entitled to displace were suited to them, they could voluntarily demote themselves, forfeit seniority rights in their class, and bid in new positions or vacancies in some lower class. He could also, in the absence of force reduction, demote himself and bid in a vacancy or new position in a lower class, subject to the penalties of Rule 39. At least that is the interpretation we feel should be put upon the rule. For Rule 30, while widening an employe's choice of displacement **in his own class**, carefully and, we must assume, deliberately, carried over the provision in the earlier rule which permitted but one man—the most junior, upon being displaced—to invade the class below him. Evidently the parties intended to safeguard, so far as possible, the seniority positions of men in a given class from being upset by those coming down from a higher class; and this consideration no doubt accounts for the penalty provision in Rule 39 forfeiting an employe's seniority in his class if he chooses to demote himself and bid in a vacancy or new position in a lower class.

We can only assume that, if the parties, in re-drafting Rule 30 and at the same time adopting Rule 39, had intended not only to enlarge the displacement privileges within a class, as they did, but also to grant privileges of displacement into lower classes beyond any previously granted, they would have said so.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Eino O. Willenius, Claimant, was wrongfully displaced from his regularly assigned position as Assistant Signal Maintainer, for the period Jan. 4, 1938, to and including Mar. 22nd, 1938, and should be compensated for loss of wages and expenses as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of July, 1939.