

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
BOSTON AND MAINE RAILROAD**

STATEMENT OF CLAIM: "That F. E. Martin, signal helper, be reimbursed for his actual expenses while temporarily employed as a signalman away from his regular assigned home station on August 10, 16, 17, 18 and 19, 1938."

EMPLOYEES' STATEMENT OF FACTS: "F. E. Martin held a permanent position as a signalman in Foreman E. H. York's crew up to June 14, 1938, on which date the crew was temporarily abolished. Martin, not having sufficient seniority to displace in the signalman's class, was compelled to exercise his displacement rights in the helper's class, displacing the helper at Nashua, N. H., which position he held at the time he was sent by the management to fill the temporary position of signalman at Lowell, Mass.

"On account of the track department renewing slips and plates at Bleachery Interlocking Tower, located at Lowell, Mass., it became necessary for the management to temporarily assign a signalman to work along with the section crew to make necessary changes and adjustments to the interlocker. F. E. Martin, being the senior reduced signalman working in the helper's class with home station or headquarters at Nashua, N. H., was assigned by Signal Supervisor Wood to fill the temporary position of signalman at Lowell, Mass., to look after the signal and interlocking work at Bleachery Tower in connection with the renewing of slips and plates by the Track Department. On completion of the work at Lowell, Mass., Martin returned to his regularly assigned helper's position at Nashua, N. H.

"There is an agreement in force between the parties which became effective Oct. 1, 1929."

CARRIER'S STATEMENT OF FACTS: "F. E. Martin held a permanent position as a Signalman in Foreman E. H. York's Floating Crew up to June 14, 1938, on which date the crew was temporarily abolished.

"As current Agreement contains no provision to govern temporary lay-offs, it was mutually agreed between the Management and the Committee that employees affected would be allowed to exercise their displacing rights as provided in Section 5, Article 3, on a temporary basis with understanding that when such positions were restored they would be required to return to their respective permanent positions.

"Martin, not having sufficient seniority to displace in Signalmen's class, displaced in Helpers' class at Nashua, N. H.

"On account of the Track Department renewing slips and plates at Bleachery Interlocking Tower, located at Lowell, Mass., about fourteen (14) miles from Nashua, N. H., the services of a Signalman were temporarily required to work with the Track Department performing work recognized as signal work.

employe in the district, and if accepted, it be on the basis of exercise of seniority and, therefore, without expense to the Railroad, by paying expenses away from home station, or otherwise."

OPINION OF BOARD: By reason of the period of its occurrence this case is linked with a question of the proper method to be followed under the terms of the agreement in filling a temporary vacancy which question then and for some time preceding had been at issue between the parties. The organization contended that under Article III, Section 1, the senior employe was entitled to such temporary position; the carrier contended that under Article IV, Section 7, such position could be temporarily filled by an available employe pending permanent appointment. Evidence of recognition by the parties of the conflict between the rules and of exchange between them in an endeavor to arrive at an understanding are in the record which shows, despite that misunderstanding had been cleared progressively on several phases of the question, negotiations on the entire matter at issue had not been concluded.

The record first shows that in a prior situation where a regularly assigned signalman, whose proper use was not in question, was used away from his home station filling a temporary position, the representatives of the parties were in agreement that actual expenses would be allowed when boarding car facilities were not available.

The record further shows that at the present time one phase upon which the parties are not in disagreement is that in filling such temporary positions the Carrier may elect to use either the senior furloughed signalman or the senior reduced signalman working in a lower grade,—there being reservation that on a short vacancy of a day or two an available employe may be used if a senior man is not available. The employes concede that if a furloughed employe is thus used he is not entitled to expenses; the carrier contends that if an available senior employe is thus used it is in exercise of his seniority, in which event he is not entitled to expenses.

The situation thus appears to require further consideration by the parties of the methods to be followed in filling short vacancies of a day or two under the circumstances of their occurrence and the allowance or non-allowance of expenses thereupon, which questions, being at least a portion if not all that remains of the issue as to the proper method of filling temporary positions as yet unreconciled by the parties, are ones which it appears to this Division may be adjusted advantageously by agreement of the parties.

The immediate dispute however being before us it is incumbent upon the Division to dispose of it on the basis of the circumstances as they appear in the record in the light of the agreement and the understandings of the parties to the extent that they exist. The facts are that signal helper Martin, a reduced signalman, with a regularly assigned home station at Nashua, N. H., was used for 5 days on a temporary new signalman's position which actually lasted 10 days at Lowell, Mass., where boarding car facilities were not available. It is the employes' contention that Martin was sent from his home station and thus under Article II, Sections 17 and 13, was entitled to his expenses; it is the Carrier's contention that Martin went to Lowell in exercise of his seniority, in which event under Article III, Section 12, the action would be taken without causing extra expense to the Carrier. Reconciliation of those contentions is not essential to a proper determination of whether or not the claimant in this instance is entitled to his actual expenses in the light of the understanding of the Carrier's right of election to use either the claimant Martin, who was the senior reduced signalman, or to use the senior furloughed signalman. In the instance of record previously cited, similar in respect to use of a regularly assigned signalman away from his home station filling a temporary position, the Carrier evidenced its understanding that actual expenses were properly allowable when boarding

car facilities were not available. Having elected in the present instance to use the senior reduced signalman instead of the senior furloughed signalman who might have been properly recalled to service without being entitled to allowance for expenses, the Carrier is under similar obligation here to allow actual expenses.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 claimant, F. E. Martin, is entitled to actual expenses stated to amount to \$7.85 incurred on August 10, 16, 17, 18, and 19, 1938 while temporarily employed as a signalman at Lowell, Mass. away from his regularly assigned home station at Nashua, N. H.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of November, 1939.