Award No. 1124
Docket No. SG-1125

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

PENNSYLVANIA RAILROAD

STATEMENT OF CLAIM: "Claim of R. Haggas for compensation at signalman's rate of pay for all days worked at the signalman's rate by H. T. Vandeveer, a junior signalman, during periods Haggas was laid off November 3, 1935, to January 19, 1936; April 1, 1936, to April 9, 1936; and May 4, 1936, to May 11, 1936."

EMPLOYES' STATEMENT OF FACTS: "Due to a reduction in force, Signalman Haggas was furloughed on November 1, 1935. He was recalled to service as signalman on January 20, 1936; he was again furloughed on April 1, 1936, and recalled from this furlough on April 10, 1936; again furloughed on May 4, 1936, from which furlough he returned to duty on May 12, 1936. Vandeveer, who had greater seniority in the helper class but was junior in the mechanic's class was retained in service during the period in question.

"During the periods in which Signalman Haggas was furloughed Vandeveer worked as follows:

November 1, 1935, to January 19, 1936

1935		Worked as Helper	Worked as Mechanic
November	1	x	
	2	x	
	3		x
	4	x	
	5	x	
	6	x	
	7	x	
	8	x	
	9	x	
	10	R	
	11		x
	12	x	
	13	x	
	14	x	
	15	x	
	16	x	
	17	R	
	18	x	

"All data contained herein has been presented to the employes involved or the duly authorized representative thereof.

"CONCLUSION

"Therefore, the Carrier respectfully submits that the claimant Haggas, is not entitled to compensation for the days claimed while furloughed from active service; that the use of Vanderveer to perform the Signalman's service referred to was not in violation of the agreement between the Carrier and the employes represented by the Brotherhood of Railroad Signalmen of America, and respectfully requests your Honorable Board to dismiss the claim of the employes in this matter.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the claimant, with the right to test same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

There is in existence an agreement between the parties bearing effective date of July 1, 1928, as to Regulations and March 16, 1927, as to Rates of Pay.

OPINION OF BOARD: There can be no question as to the great importance of the seniority rules of collective agreements between carriers and their organized employes; and failure on the part of any carrier to adhere to these rules provides a sound and just basis for such penalty payments as are sought to be recovered in the instant proceeding. It must be remembered, on the other hand, that the seniority rights of employes are confined to those established by these collective agreements; and to the extent that the carrier is exempted from their restrictions, in the interest of needed stability in the conduct of operations, it is equally important that such authorized freedom of action be not penalized.

In this proceeding controversy centers in the bulletining rule of the Agreement. This rule requires that new positions and vacancies be bulletined, but excepts from the requirement temporary positions of vacancies of less than 30 days' duration. The bulletining requirement is obviously designed to provide for the carrier the necessary data for the application of the seniority rules and the recognition of seniority rights; by the same token, exemption from the bulletining requirement deprives the carrier of the necessary data and removes the obligation to adhere to seniority in making assignments to temporary positions or vacancies. To hold, as contended by the employes, that a senior furloughed employe must necessarily be given preference to a junior active employe in connection with such temporary vacancies as are here involved, is not only to remove all rationale for the differentiation in the bulletining rule between ordinary vacancies and temporary ones of less than 30 days' duration—since the same obligations in observing seniority rights would be imposed in both instances—but is either to compel the carrier to act at its peril in making assignments to temporary vacancies without bulletining and the bids that result therefrom, or to make the assertion of the rights of employes depend upon mere accident. Neither the rules of the Agreement nor the practice of the carrier support such a position; on the contrary, there is evidence of record that the employes have sought through negotiation, though without success, to have a rule reflecting their position in this proceeding incorporated into the Agreement. The existing bulletining rule, as construed herein, seeks to remove the practical difficulties that would flow from repeated displacements in connection with temporary positions or vacancies through the exercise of seniority; and the rule as thus construed provided the basis for the appointment of a junior employe possessing the necessary merit and ability and holding seniority as a signalman.

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 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 evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.