

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim that Helpers F. Ginfrida and W. A. Addayson should be paid the signalman's rate of pay (with necessary time and one-half time) from 4:30 P. M., March 2, 1936, to 4:30 P. M., March 3, 1936, account of junior signalmen receiving mechanic's rate of pay for the period of time in question."

EMPLOYEES' STATEMENT OF FACTS: "Claimants were regularly assigned as helpers in gang located at Newark, N. J., with tour of duty 8:00 A. M. to 12:00 noon, 12:30 P. M. to 4:30 P. M. daily, except Sunday. Both these men are qualified signalmen, having been reduced to the helper class account force reduction. About 4:15 P. M. on March 2, 1936, information was received in connection with cable trouble at Deans, N. J., and as a result five signalmen and four helpers were recruited for this emergency work. Of the four helpers used in this emergency work, three helpers performed service as mechanics and received the mechanic's rate of pay.

"W. A. Addayson was not used as a mechanic during the time in question and did not receive the mechanic's rate of pay. F. Ginfrida was not used on this emergency work but was present and available for the service when the forces were recruited.

"Addayson claimed the mechanic's rate for the entire time he was used in this emergency work as a helper, account a junior man receiving the rate. Ginfrida claimed pay at the mechanic's rate for the entire period of the emergency because a junior employe was used. Both claims were denied by the carrier."

POSITION OF EMPLOYEES: "Ginfrida and Addayson were both qualified signalmen and were available for the mechanic's work which was performed by junior employes. When the forces were recruited for this emergency, it was the duty of the foreman in charge to select the senior qualified employes. Had any of the senior men requested to be relieved from this emergency assignment, it would have been the further duty of the foreman to select the next employe in seniority order.

"The carrier contended in its denial of Ginfrida's claim that he did not volunteer for the service. We cannot reconcile ourselves to such a contention because it is not a practice in recruiting employes for work in the signal department by asking for volunteers. It is a duty of the carrier to call the senior qualified employe.

"The carrier contended in its denial of Addayson's claim that he was not immediately available for use as a mechanic because he was working at another location. This is an unjustifiable contention, for it is a known

that there is no provision in the agreement between the Carrier and the class of employees of which they are members which would have required the Carrier to use the Claimants to perform the said service if they had been available.

"Therefore, the Carrier respectfully submits that the claimants, Ginfrida and Addayson, are not entitled to the compensation claimed; that the use of Hork and Hatos to perform Signalman's service referred to was not in violation of the agreement between the Carrier and the employees represented by the Brotherhood of Railroad Signalmen of America, and respectfully requests your Honorable Board to dismiss the claim of the employees in this matter."

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: The basic issue in this case is identical with that raised in Docket SG-1125, involving the same parties and the same rules, which was disposed of in Award 1124 of this Division, rendered June 14, 1940. No adequate ground appears for departing from the controlling determination in Award 1124, and the Opinion of the Board in that proceeding is made part of this Award. While the claimants herein were demoted rather than furloughed employees, the exercise of their seniority rights, as in case of the furloughed employee involved in Award 1124, is equally limited by the exception as to temporary positions contained in the bulletining rule of the Agreement. Since the carrier was under no obligation to assign the emergency work here involved on the basis of seniority, it is unnecessary to consider the merits of the conflicting contentions as to the availability of the claimants.

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 employees 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 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 26th day of July, 1940.