

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Fred L. Fox, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Frank O. Lowden, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: (a) That W. C. Elms, Signal Maintainer, Chicago Division, is entitled to Foreman position in System Gang No. 2, performing work on the Chicago Division.

(b) That effective as of February 28, 1942, W. C. Elms be paid the difference in the salary of \$255.50 per month due him and the amount he has been paid and that salary of \$255.50 be continued for period of assignment.

JOINT STATEMENT OF FACTS: Bulletin No. 59, dated February 3, 1942, issued by Superintendent Telegraph and Signals, advertised for bid position of 1 Foreman, among others, System Gang No. 2, Chicago Division, at \$255.50 per month, temporary, to perform general signal work and in connection with installation of Centralized Traffic Control. W. C. Elms applied for position of Foreman in System Gang No. 2. However, Bulletin No. 62, dated February 19, 1942, assigned Foreman's position to Mr. C. C. Jensen, who also applied for the position.

Mr. W. C. Elms was employed in the Signal Department, Chicago Division, April 30, 1923, and has concurrent seniority of that date as a signal helper, assistant signalman, assistant signal maintainer, and signal maintainer.

Mr. C. C. Jensen was employed in the Signal Department, Chicago Division, April 19, 1924, and has concurrent seniority of that date as a signal helper, assistant signalman, assistant signal maintainer, and signal maintainer. Mr. C. C. Jensen holds seniority as signal foreman as of April 19, 1924, on the system seniority district.

Neither Mr. Jensen nor Mr. Elms holds seniority rights in Foreman class on the Chicago Division seniority district.

There is an agreement in effect between the parties to this dispute dated July 1, 1938.

POSITION OF EMPLOYES: It is the position of the Brotherhood that W. C. Elms holds greater seniority rights on the Chicago Division than C. C. Jensen, the assignee, based on relative length of service. This is seniority as defined in Rule 36, quoted here for your ready reference:

"Seniority shall consist of rights based on relative length of service of employees as hereinafter provided."

in line with their comparative system seniority and over new men on all positions created in seniority district Rule 40 (c)."

The contention of the employees is one in fact based on the assumption that Mr. Elms should have been promoted to Signal Foreman in system seniority district as covered by Rule 40 (c) irrespective of the fact that Mr. Jensen, the senior applicant holds a seniority date as Signal Foreman as of April 19, 1924. Obviously promotions were not involved nor was the Carrier required under the rules to promote a signalman to signal foreman under the conditions in this case. In response to Bulletin No. 59 Mr. Elms also applied for position of leading signalman in System Gang No. 2, and being the senior applicant was assigned thereto. Before the assignment of Signal Foreman, as covered by Bulletin No. 59, was made, Mr. Elms, who is the local chairman of the Signalmen on the Chicago Division, was called to the office of the Assistant Superintendent Telegraph and Signals and that officer of the Carrier stated to Mr. Elms that there was no need for promoting a signalman to signal foreman in the instant case for the reason experienced and qualified foremen holding system seniority as foremen had applied for the position of foreman in System Gang No. 2, and, further, that in his opinion Mr. Elms, without previous experience as a foreman, was not qualified to supervise the work of a gang engaged on a large new project of this kind. In the assignment of Mr. Jensen the Carrier recognized the senior applicant in the seniority class and in the seniority district in question and under the applicable rules of the agreement there are no grounds for the contention that Mr. Elms should have been promoted in the instant case. Therefore, we respectfully ask your Board to decline the claim.

OPINION OF BOARD: On February 3, 1942, the Carrier, acting through its Superintendent of Telegraph and Signals, advertised a set-up of System Gang No. 2, for work on its Chicago Division, consisting of one foreman, at a monthly pay of \$255.50, one lead signalman, six signalmen, three assistant signalmen, and eight helpers. The work to be done by the gang was special installations C. T. C., camp car headquarters. C. C. Jensen, L. E. Fort, B. L. Jones and W. C. Elms bid for the foreman position, and it was awarded to Jensen. No protest is made on the part of Fort or Jones. Elms contends the position should have been given him instead of Jensen, basing his claim on his alleged seniority on the Chicago Division, and relying on Rule 40, and the partial interpretation thereof by Rule 56. We quote these Rules:

"Rule 40. Seniority rights of employees, except as provided for in Rules 54, 56 and 57 are confined to:

- (a) The territory under the jurisdiction of a Signal Supervisor.
- (b) The force under the jurisdiction of Signal Shop Foreman.
- (c) A system seniority district, composed of all seniority districts on the system, for employees working under the supervision of the Signal Engineer and engaged in larger projects covering installing, removing or the changing of a signal system or a substantial part thereof, will be established."

"Rule 56. Prior to employing new men for new positions or vacancies on seniority districts (a) and (b) such positions shall be bulletined to all employees on the system and assignments will be made, if any, per comparative system seniority ranking.

"Assignments to positions on Signal Engineer's seniority district shall be made on a comparative system basis, except employees on their home seniority districts shall be given preference."

It will be noted that we are here dealing with two types of seniority; one, Division Seniority, and, two, System Seniority, covered by Sections (a) and (c) of Rule 40. Elms had both Division and System Seniority for all positions below that of foreman, dating from April 20, 1923, but no seniority as foreman on either a division or on the system. The seniority of

Jensen on the Chicago Division, for all positions below that of foreman, dates from April 19, 1924, but he has no seniority as a foreman on that Division. The System Seniority of Jensen as to positions below that of foreman dates from 1914 and 1915. His seniority as a foreman on the System Roster of Seniority dates from April 19, 1924.

It is obvious that if the action of the Carrier, in awarding the foreman's position to Jensen, is to be upheld, it must be on the ground that Jensen had seniority as a foreman on the System Roster, while Elms had no seniority as a foreman on either the System or Division Roster. We are not called upon to say what would be the right of the parties if Elms had seniority as a foreman on either roster, for, admittedly, that situation does not here exist. What we are called upon to decide is whether one who has no seniority as a foreman, is entitled to compete for a foreman's position with one who has such seniority, whether on the system or on a division.

Rule 40 provides for three separate and distinct seniority rosters: one, the territory under the jurisdiction of a Signal Supervisor, which we understand to cover a division; two, the force under the jurisdiction of a Signal Shop Foreman; and, three, a system roster, covering all seniority districts, to be set up for employes working under the Signal Engineer, as distinguished from a Signal Supervisor, or Signal Shop Foreman, and where employes are engaged in larger projects. Presumably it was contemplated that these larger projects would have a division location, and this helps us to understand and apply Rule 56 hereafter to be discussed.

Rule 56 relates entirely to new positions. The first paragraph of the Rule applies to positions under a Signal Supervisor or Signal Shop Foreman, and, as the Rule provides, "such positions shall be bulletined to all employes on the system and assignments will be made, if any, per comparative system seniority ranking." The second paragraph of this Rule relates to positions under the supervision of the Signal Engineer, the System Seniority District, and as to these positions, the Rule requires that assignments shall be made on a comparative system basis, exactly the same method as that employed as to the other seniority districts, with this important exception: "except that employes on their home seniority districts shall be given preference." This exception must have been intended to mean something, and to have some effect. What we think was meant is that where a system project is set up in a particular division, as in this case, the Chicago Division, employes on that Division, assuming the same to be their home seniority district, shall be given preference. In other words, local seniority controls over system seniority. The application of the Rule in this fashion explains and justifies the Carrier in preferring, as to positions below that of foreman, certain men on the Chicago Division, over those who may have had supervisor seniority in other divisions or on the system roster. The petitioner contends that the action of the Carrier in this regard logically requires the same action in a case when the position of foreman is involved; and that there is nothing in the agreement making any distinction as to grades of employment. We are unable to follow this line of argument for reasons stated below.

Rule 44 provides the manner in which seniority rosters shall be compiled and corrected. That Rule reads:

"Rule 44. A separate seniority roster will be compiled for each seniority district. Rosters will show the name, seniority datum, and relative ranking in each seniority class of each person holding seniority on the seniority district, following the form shown in the sample roster contained in this agreement. Rosters will be revised in January of each year. A seniority date not protested within ninety (90) days from its first position on a roster following the effective date of this agreement, will be considered permanently established. Typographic errors on subsequent rosters may be corrected at any time. Copies of the revised rosters will be furnished all employes affected. The General Chairman will be furnished copies of all seniority rosters and all revisions."

It will be observed that the Rule refers to the "relative ranking in each seniority class." When we examine the sample roster mentioned in the Rule (page 36 of the agreement), and the several rosters filed in the record before us, we find four classes for seniority set up; one, foreman; two, leading signal maintainers, leading signalmen, signalmen and signal maintainers; three, assistant signal and assistant signal maintainers; and, four, helpers. We think this must mean that the agreement contemplates that the rules as to seniority were to be applied as between employes of the same grade or class, and that it was not intended that an employe holding seniority in a class below that of foreman, would be entitled to compete for a system foreman's position, where system or division foremen were bidding for the job. His right to so compete would arise when he obtained a seniority rating as a foreman either in his home district or on the system, and not before. Should a different rule be applied, a person holding system seniority as a foreman, would not ordinarily be able to benefit from his system seniority, except in his home seniority district; whereas, an employe, if in line for promotion as a foreman in his home seniority district, or on the system, would always be in position to bid for foreman's work anywhere on the system, subject only to the provision of Rule 56, giving preference to employes in their home districts. We see no injustice in giving to foremen the protection to which their service and promotion entitle them, and, as we see the matter, this is what the Carrier did in this case.

While not controlling, we think Rule 64, relating to promotion, enters the picture. That Rule reads:

"Rule 64. Employes are entitled to promotion to positions covered by this agreement only on the district over which their seniority prevails except that employes of all districts will be given preference in line with their comparative system seniority and over new men on all positions created in seniority district Rule 40 (c)."

Under that Rule Elms was in position to secure promotion to the position of foreman, either in his home district or the system seniority district, and was entitled to preference, in line with his system seniority, over new men, on all positions created under Section (c) of Rule 40. All he had to do was to secure this promotion, and, when obtained, he would have been in line to bid for a foreman's position at any point on the system. The fatal weakness in his claim is that he had not secured this promotion when he made his bid.

We do not think the Carrier violated the agreement as contended by the petitioner, and his claims will be denied.

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 Carrier did not violate the current agreement as claimed by the petitioner.

AWARD

Claim (a) denied. Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1943.