

Award No. 2373
Docket No. SG-2330

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of F. H. Tull for expense allowance following assignment to a position of Assistant Signal Maintainer at Pasco, Washington, while occupying a position as Signalman, based on Rule 19 of the Signalmen's Agreement.

JOINT STATEMENT OF FACTS: F. H. Tull was first employed as a helper in the Signal Department on July 9, 1937.

On July 16, 1937, Mr. Tull was promoted to a position of Assistant Signal Maintainer and established seniority as an Assistant Signal Maintainer as of this date. Mr. Tull continued to work as an Assistant Signal Maintainer until August 31, 1940.

On September 1, 1940, Mr. Tull was assigned to a position of Signalman.

On May 14, 1942, Bulletin No. 270, reading as follows, was posted calling for bids for a position of Assistant Signal Maintainer at Pasco:

**"NORTHERN PACIFIC RAILWAY COMPANY
SIGNAL DEPARTMENT
BULLETIN NO. 270**

**Tacoma, Washington
May 14, 1942**

ALL CONCERNED:

Assistant Signal Maintainer's position at Pasco is open for bid. Bids will be received in this office to and including May 19th, 1942.

cc—SWL
HMW
SSS
Local Chairman

**T. C. Hansen
Supervisor of Signals**

Position as covered by Bulletin No. 269 is assigned to D. E. Peterson."

On May 23, 1942 bulletin No. 271 reading as follows was posted naming F. H. Tull as being assigned to the position of assistant signal maintainer at Pasco, and advising Mr. Tull that he would remain on his present position due to service requirements:

is beyond the conception of the Carrier. Mr. Tull, while working as a signalman in the construction gang did not perform service away from his headquarters and therefore, Rule 19 does not sustain his claim for expenses.

The Employees in presenting this case to your Board will undoubtedly argue that from May 23, 1942, when Mr. Tull became assigned to the temporary assistant signal maintainer's position at Pasco, until August 10, 1942, when Mr. Tull became assigned to the position of assistant signal maintainer at Gibbon, Pasco was the headquarters of Mr. Tull, and that from August 10, 1942, Gibbon was Mr. Tull's headquarters. Such an argument is untenable. Permitting an employe occupying a position in a higher class to bid for and become assigned to a position in a lower class so that he will have a permanent position to return to upon termination of the temporary position in the higher class is a practice that, as before stated, has developed in order to give such an employe a position to return to upon termination of the temporary service in the higher class. As has already been shown by the Carrier, Rule 3 (c) of the current Signalmen's Agreement, makes it obligatory upon an employe to take service in a higher class after having performed the required apprenticeship and this rule does not permit such an employe to return to service in the lower class so long as he can continue to work in the higher class. The inauguration of the practice of permitting an employe working in a higher class to apply for and become assigned to a position in a lower class does not ipso facto establish the headquarters of the position in the lower class as the headquarters of such an employe while he continues working in the higher class so as to entitle such an employe to expenses while working away from the headquarters of the position in the lower class. The headquarters of the position in the higher class continues to be the headquarters of such an employe so long as he continues working in the higher class. Any other interpretation of the rules would lead to an absurd result. It would mean that all an employe would have to do in order to be entitled to expense allowance would be to merely apply for a position in the lower class and become assigned to such a position and then continue to work on the position in the higher class. It requires no argument to convince your Board that such a result was never contemplated by the rules of the Signalmen's Agreement.

The employees will undoubtedly contend that Mr. Tull was not covered by the exception clause of Rule 19 on the theory that he was not sent to temporarily relieve an employe in a higher class. The carrier has shown that Mr. Tull comes under the general provisions of Rule 19 and such being the case the exception clause would, of course, have no application. However, even the exception clause would bar Mr. Tull from receiving expenses while working as a signalman if he had made application for and been assigned to a position in a lower class. If the employees' contention is correct, then after Mr. Tull was assigned to the Assistant Maintainer's positions he would have relinquished his position as a Signalman, necessitating the use of someone else in the Signalman's position. Therefore, if the employees' contention is correct that after Mr. Tull was assigned to the Assistant Maintainer's positions he constructively became attached to these positions, then by the same line of reasoning he was while working as a Signalman, after having been assigned to the positions of Signal Maintainers, temporarily relieving an employe in a higher class, and on this theory he would not be entitled to expenses under the exception clause of Rule 19.

The Carrier has shown that under the rules of the Signalmen's Agreement Mr. Tull is not entitled to expenses while working as a signalman in the construction gang and the claim, therefore, should be declined.

OPINION OF BOARD: The controlling facts in this Docket are in all respects similar to the facts in Docket SG-2223, Award 2372, with the exception that Mr. Tull had no seniority as a signalman.

The Carrier relies upon Rule 3 (c), but as in Docket SG-2223 the Carrier assigned the Claimant to the position of assistant signal maintainer with full knowledge at the time the assignment was made that Claimant had had more than four years' service as an assistant, and at the time was filling a temporary position as signalman.

The Carrier's acts refute its present contention that Rule 3 (c) excludes an assistant with four years' service from an assistant's position when there is open only a temporary position of signalman. The Carrier admits in its submission that if its contentions were sustained there would be created an "anomalous situation" in that an assistant signal maintainer with four years' experience could be kept in a temporary signalman's position indefinitely and never establish seniority. We do not believe the parties to the Agreement intended to create such an anomalous situation, and by construing Rule 3 (c) in accord with the acts of the Carrier no such situation will be created.

Other contentions of the Carrier are disposed of in Award No. 2372.

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 Claimant is entitled to recover necessary expenses while held in temporary Signalman's position after being assigned to position of Assistant Signal Maintainer.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1943.