

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ERIE RAILROAD COMPANY**

STATEMENT OF CLAIM: (a) That Ed. Giet, assistant signal maintainer, be paid the difference between the rate of assistant signal maintainer that he was paid and the rate of a signalman for time a junior employe worked as a signalman during the period September 8, 1941, to October 31, 1941, both dates inclusive.

(b) That R. H. Jerome, signal helper, be paid the difference between the rate of signal helper that he was paid and the rate of an assistant signalman for time a junior employe worked as an assistant signalman during the period September 8, 1941, to October 17, 1941, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: Beginning September 8, 1941 the carrier started a large project involving overhauling its car retarders in the Marion, Ohio westbound hump yards. The work was progressed day by day from that date until September 25, 1941, when, following protest against assignment of junior employes, the work was interrupted for two days and then continued intermittently until October 31, 1941. The work entailed considerable labor and material. The material had been assembled at the site for sometime prior to beginning the job.

On September 8, 1941 the carrier's representative, without bulletins and without consultation concerning the interest of employes, assigned Ralph Spain, the junior assistant signalman in point of seniority on the seniority district, to a position of signalman to work on the hump yard project. Mr. Spain continued on this assignment during regular assigned hours without interruption, except Sundays, until September 25, 1941. At this time the Local Chairman filed objection to assignment of the junior employe to the position, it being his contention that the senior assistant signalman was, under the provisions of the agreement, entitled to the position.

On September 26, 1941 Mr. Spain was returned to the class of assistant signalman and remained in that class for two working days when he was again assigned to the position of signalman working on the job at the Marion hump. This assignment continued for three days and he was returned to the assistant's class on October 2, 1941, again returned to the signalman's position two days later, continuing thereon until October 15. He was returned to position of assistant signalman at this time for one day, October 16, 1941, again advanced to position of signalman at the Marion hump for one day and back to assistant signalman for one day, then signalman for two days, then assistant signalman for four days, then signalman for one day, again assistant signalman for four days and worked the remaining one day in the month of October as a signalman. All such service was performed at the westbound hump in Marion yard.

signal or maintainer helper, rank No. 26, July 29, 1926, and as an assistant signalman and assistant signal maintainer with rank No. 26, August 19, 1940. He was laying off on October 27, 28, 29, 30 and 31, 1941.

Claimant R. H. Jerome was regularly assigned to gang No. 75 at Marion, Ohio and he appears on roster dated May 1, 1941 as a signal or maintainer helper, rank No. 35, September 21, 1936. He was laying off October 17, 1941.

Both of these claimants were holding regular assignments. There were no additional employees needed in gang No. 65 at Marion, assigned to maintaining and overhauling the car retarder. Accordingly, no additional positions were bulletined which would have afforded these claimants the right to indicate their desires for such bulletined positions and, accordingly, the right to transfer or vacate the positions to which they were assigned during the period of the claim.

Rule 50 was not involved in this claim because there were no new positions or vacancies. The already existing positions remained effective except that on certain dates, as hereinabove indicated, and the leading maintainer approved the daily time slips for a higher rate of pay without proper authority and without supporting rules.

The General Chairman in progressing the claim in favor of Messrs. Giet and Jerome failed to cite any rules that would support the claim. They did argue that where Messrs. Spain and Amann were temporarily promoted on the dates in question, the senior signalman and signal helper or maintainer helper should have had first consideration, irrespective of the fact that such assistant maintainer and signal helper or maintainer helper were already holding assignments in other signal gangs and were not available for gang No. 65, which gang was maintaining and overhauling the car retarder at Marion, O.

We feel that this claim should be denied by the Third Division for the following reasons:

1. Assistant Maintainer Spain and Signal Helper Amann were unnecessarily and improperly paid higher rates on certain dates between September 8, 1941 and October 31, 1941, and such higher rates were not properly authorized and were not supported by rules or other agreed upon practices. Such improper payments would not suffice to warrant consideration on basis of a new position.

2. There were no new positions or vacancies in gang No. 65 at Marion which would justify consideration of the claim by Messrs. Giet and Jerome.

3. There are no rules or other agreed upon practices which would require the assigning of these particular claimants in these circumstances even if new positions or vacancies were pending assignment.

OPINION OF BOARD: On the dates in dispute Assistant Signal Maintainer Spain was assigned to the position of signalman and on the same dates Signal Helper Amann was assigned to the position of Assistant Signalman. These men were junior to the Claimants.

The Carrier contends that the assignments as made by Leading Maintainer Lutz were without authority. However, it appears in the record that the daily reports of Mr. Lutz show these assignments were certified as correct by the Signal Supervisor and approved by the Division Engineer, and the men paid on the basis of the assignments. If Lutz was without authority in the first instance, his acts were in all respects ratified by the Carrier and the Carrier is not in a position to now question his authority.

No question of the ability or merit of Claimants to perform the work has been raised and it follows, in our opinion, that under the provisions of Rules 24 and 45 Claimants were entitled by virtue of their seniority to be advanced to the positions to which Spain and Amann were assigned. Any other holding would, in our judgment, be contrary to the clear intent of the rules relating to seniority.

Claimants should not be compensated for any days they laid off of their own accord.

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 employes involved in this dispute are respectively carrier and employes 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 facts show a violation of the Agreement.

AWARD

Claims (a) and (b) sustained 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 15th day of November, 1943.