

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: (a) Protest against the removal of E. J. Savely from signal maintainer position at Canon City, Colorado, on August 1, 1942, when J. V. Branberg was assigned to the position by the carrier.

(b) Claim of E. J. Savely for expenses totaling \$488.80 while filling another position from August 9, 1942 to June 12, 1943, inclusive, due to being removed from his position at Canon City, Colorado, by the carrier while J. V. Branberg was assigned to the position.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. V. Branberg was the regular assigned signal maintainer at Canon City, Colorado, prior to his assignment to an official position by the carrier. Subsequent to the time that Branberg acquired the official position, the position of signal maintainer at Canon City was advertised for bids and filled temporarily pending his return. This action was in accordance with the carrier's interpretation of Rule 39 of the agreement then in effect. In a general revision of the agreement on this carrier, effective July 1, 1939, the number of this rule was changed to 38, but the rule itself was not changed. It reads:

"Employees may be granted leave of absence not to exceed ninety (90) days in any twelve month period, except in case of physical disability, without loss of seniority, and except that such leave may be extended in the discretion of the Signal Engineer. Employees covered by this agreement, now holding or hereafter accepting official positions with the railroad or with the Brotherhood of Railroad Signalmen of America, will retain and accumulate seniority rights and may resume position formerly held, providing they return to it within thirty (30) days after released from such official position.

"Officers first employed with this railroad in an official capacity, will, after two years' service, establish and accumulate seniority in all classes coming within the agreement."

The temporary position at Canon City was being filled by Mr. Vonn Northrop and the adjoining signal maintainer position at Florence, Colorado, was being filled by Mr. H. B. Echard. Due to a change in maintenance territories the permanent position at Florence held by Echard was abolished on July 31, 1939. Mr. Echard, who was senior to both J. V. Branberg and Vonn Northrop, displaced on the position at Canon City. Subsequently he (Echard) elected to bid in another signal maintainer position at Salt Lake City, Utah, which left the Canon City position open. Following this action, the carrier

**3. Rule 34 of the Agreement, cited by
Organization, is not applicable to the instant claim**

Organization predicates its claim upon Rule 34 of the Agreement, reading:

“Seniority rights of employes to new positions or vacancies will be extended over the entire railroad. System seniority shall prevail. When force is reduced or a position abolished a senior employe of a class will have the right to displace the junior employe of the same class with the least seniority rights, except that a senior Signal Maintainer may displace the Junior Signal Maintainer with the least seniority rights as Maintainer. The Junior employe of a class so displaced will have the same rights in the next lower class, and employes changed to a lower class on account of force reduction or a position abolished shall continue to accumulate seniority in the class from which changed.”

Organization contended that E. J. Savely, claimant, Canon City, Colorado, was permanently assigned to that territory and not being the junior employe could not be displaced. It will be noted that the rule expressly provides for system seniority, the seniority rights of employes when new positions or vacancies occur at any point on the railroad, and the right of employes when force is reduced or a position abolished. A new position or vacancy under the Agreement was not created when Branberg was demoted. Neither was the force reduced nor a position abolished. The factual situation of the instant claim not being within this rule, it can have no application here.

CONCLUSION

The claim in the above entitled cause should be denied, Carrier having asserted and proved:

1. That the “hereafter accepting official positions” clause of Rule 38 is applicable to J. V. Branberg;
2. That J. V. Branberg exercised his seniority rights under Rule 38 when he returned to his former position within thirty days of date released from his official position; and
3. That Rule 34 of the Agreement, cited by Organization, is not applicable to the instant claim.

OPINION OF BOARD: A brief chronological summary of the facts more fully disclosed by the record will be of aid in the consideration of this case. The carrier formerly had signal maintainers’ positions, serving adjoining territories, with headquarters at Canon City and Florence, Colorado. The Canon City position was occupied by Branberg, and that at Florence by Echard. In 1936 Branberg was promoted to the official position of Assistant Supervisor of Signals and Vonn Northrop was assigned as his successor at Canon City. The Florence position was discontinued and a part of its territory annexed to that at Canon City on July 31, 1939. On the next day Vonn Northrop was displaced by Echard through the exercise of seniority and the latter served at Canon City until early April 1940, when he bid in another position at Salt Lake City. The carrier advertised the vacancy at Canon City for bids as a permanent position on April 18th and on the 29th assigned it to the claimant, Savely. Subsequently, on July 31, 1942, Branberg was demoted from his official position and he immediately demanded and was given Savely’s position at Canon City. Savely, exercising his seniority, then displaced on a signal gang at Rifle, Colorado, where he remained until July 12, 1943, when he successfully bid in another maintainer’s assignment.

The petitioner asserts that Savely was displaced from the position at Canon City by Branberg in violation of the effective Agreement of July 1, 1939. The demand is that the claimant be reimbursed for living expenses incurred between August 9, 1942 and July 12, 1943, while he was deprived of work as

a maintainer and obliged to accept employment as a member of a signal gang away from home. The carrier says the claim should be dismissed because the contentions now relied upon by the petitioner were not asserted when the controversy was in conference between the parties. We think, however, that the requirements were met when the petitioner represented to the carrier that claimant had been deprived of a designated position by a violation of the Agreement and demand was made for specific redress.

Since it affirmatively appears that the claimant was unconditionally assigned to the permanent position of signal maintainer at Canon City pursuant to bulletin and protested his subsequent displacement, the burden is on the carrier to justify its acquiescence in such displacement. This the carrier undertakes to do by asserting that Branberg had a right to reclaim the Canon City position upon his demotion as Assistant Supervisor, because he occupied the Canon City position when he accepted the official appointment. Reliance is placed upon the following provision contained in Rule 38:

"Employees covered by this agreement, now holding or hereafter accepting official positions with the railroad or with the Brotherhood of Railroad Signalmen of America, will retain and accumulate seniority rights and may resume position formerly held, providing they return to it within thirty (30) days after released from such official position."

The decisive question here to be determined, then, is whether the Canon City position which Branberg reclaimed, with the carrier's permission, after the termination of his service as Assistant Supervisor, was the same as that which he occupied immediately before his appointment to said official position. The answer depends upon the effect of the annexation of territory to the Canon City position which occurred when the office at Florence was discontinued. The carrier cites, in this connection, Rule 66, which provides:

"When a change is made in the headquarters of a position or when the territorial limits or assigned units are changed, the position will be re-bulletined as a new position only when requested to do so by the General Chairman and when mutually agreeable to the Signal Engineer and the General Chairman. Such request must be made by the General Chairman in writing and within twenty (20) days from date of change."

"When two or more territories are consolidated the senior employe or employes involved will be given preference of the consolidated territories in accordance with their seniority ranking. The employe thus displaced may exercise his displacement rights as provided in Article III, Rule 34."

The extent of the territory annexed to the Canon City office is not disclosed by the record and we have no way of knowing whether it was substantial or inconsequential. In any event, we think claimant and his organization must be deemed to be estopped from asserting that the position reclaimed by Branberg was not the same as that formerly occupied by him, since they made no timely demand that it be rebulletined as a new position in accordance with Rule 66. Inasmuch as the parties in interest treated the position at Canon City as continuing and unchanged, as they had a right to do, there is no reason why this Board should consider it otherwise.

The petitioner says, however, that Branberg's rights, as of the time he ceased to be Assistant Supervisor, are precisely what they would have been had he, instead of the claimant, been the occupant of the Canon City position when the office at Florence was discontinued and a part of its territory annexed to Canon City. From this premise it is argued that, under those circumstances, Echard, exercising his superior seniority, would have displaced Branberg, by virtue of Rule 66, and the latter would have been obliged to content himself with displacing the "junior employe of the same class with the least seniority rights," under Rule 34. In other words, the petitioner in-

troduces a hypothetical situation to establish a basis for its contention that there is a conflict between Rules 34 and 38, when there is no such conflict under the facts before us. There will be time enough to deal with the problem suggested if and when a record presenting it reaches this Board, which may not occur since Rules 34 and 38 have, in the meanwhile, both been modified. Under the facts now before us, the carrier has justified its conduct by demonstrating the applicability of Rule 38 and the inapplicability of Rule 34.

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 employees 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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1944.