

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) That the Carrier violated the agreement when it refused to permit Signalmen Edward Kelly, Joseph Connolly, and G. M. Price to displace junior Signalmen R. P. Steward, E. S. Pricket, and J. R. Harbourt on September 11, 1945.

(b) That Signalmen Edward Kelly, Joseph Connolly, and G. M. Price be paid in addition to their regular assignments:

1. All riding and waiting time from headquarters of FG-3 Gang, Trenton, N.J., to headquarters of FG-5 Gang, Bordentown, N. J., or wherever such gang may hereafter be located, and return.

2. Punitive rates of pay for all services rendered outside of regular established tour of duty of FG-3 Gang, Trenton, N. J.

3. All pay made in excess of the regular tour of duty of R. P. Steward, E. S. Pricket, and J. R. Harbourt.

Time claimed under 1, 2 and 3 covers period from September 10, 1945, until claim is settled.

EMPLOYEES' STATEMENT OF FACTS: On September 10, 1945, Edward Kelly, Joseph Connolly and G. M. Price were regularly assigned as Signalmen in Gang FG-5B, headquarters Trenton, N. J. They were given advance notice regarding the abolishment of their positions in Gang FG-5B and elected to displace, by exercise of their seniority, junior signalmen assigned to Gang FG-3, headquarters Trenton, N. J.

The Carrier advised the claimants that before they could displace the three junior Signalmen, namely, R. P. Steward, E. S. Pricket and J. R. Harbourt, in Gang FG-3, it would be necessary for them to demonstrate their ability by practical tests. See Employees' Exhibit "A".

On September 11, 1945, the claimants reported for duty at Gang FG-3, Trenton, N. J., prepared to displace Steward, Pricket and J. R. Harbourt, three junior signalmen. The Carrier refused the claimants the right to exercise their displacement rights over junior employees.

The claimants then displaced, under protest, three junior signalmen in Gang FG-5, headquarters Bordentown, N. J.

The employees involved in this case are shown on the 1945 T. & S. roster with rank in the mechanic's class, as follows:

OPINION OF BOARD: The Claimants are Signalmen holding seniority as such on the division in which they sought, by reason of reduction in force, to displace other signalmen their juniors in seniority.

Upon application of Claimants for assignment to the positions held by the junior signalmen, Carrier required them to give a practical demonstration of their ability to fill the positions which they desired to fill. The right to require such demonstration is claimed by the Carrier to be provided for in Article 8, Section 4(a) of the Agreement.

Claimants assert the right to displace under Article 4, Section 8(b), and further contend that such right of displacement is limited in its operation when forces are reduced or positions abolished only to seniority classes and date of seniority as fixed by Sections 1, 2, 3 and 4 of Article 4 of the Agreement. We cannot agree to such construction as claimed by Claimants. While Article 4, Section 8(b) authorizes the exercising of seniority, it nowhere attempts to fix the effectiveness of the seniority sought to be exercised.

Upon the other hand, Article 8, Section 4 (a), limits the effectiveness of seniority to the extent of requiring a demonstration of an applicant's ability in the event of a reasonable doubt as to his qualifications. Such a provision in labor agreements is not new nor novel. Similar provisions are the rule rather than the exception in such agreements. We instance Section 18 a() of Article 4 of the agreement here where assignments to various positions therein named are based upon "ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern."

The exercising of the privilege of requiring a practical demonstration by the Carrier is in no sense a disqualification of the applicant. Disqualification arises only after a practical test shows an applicant to lack the ability to perform the work required by the position.

From the wide scope of work required of signalmen on a property of the magnitude of Carrier's, it is entirely possible that a signalman might spend an entire lifetime in one phase of signalman's work and have no experience at all in some other phase of such work.

And this is true even though the signalman who had no experience in the one phase of such work holds highest seniority in the entire class. Classification of an entire craft, encompassing the numerous subdivisions must, in a measure, be somewhat arbitrary rather than exact. To guard against such situations, limitations upon the effectiveness of such classification are set up by agreements.

From the record it appears that claimants had spent practically all their time doing line work, such as setting poles, cross-arms and installing line wire and serial cable in connection with telegraph and telephone communication systems. These duties did not include duties such as those assigned to the junior employees they sought to displace. Moreover, on the day that Carrier asked claimants to take the test the gang to which they were asking to be assigned was located at the headquarters of the gang from which they had been relieved. No great inconvenience would have been experienced by claimants by proceeding to where the claimed crew positions were being performed and there demonstrating their fitness for the positions. Under such circumstances we cannot say that Carrier acted arbitrarily in asking for the demonstration after a reasonable doubt could well exist as to fitness of claimants under all the circumstances.

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 no rule of the Agreement is violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.