

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That Glanis Snyder be allowed straight time between the hours of 8 A. M. to 12 noon and 12:30 P. M. to 4:30 P. M., February 20, 1945 to August 28, 1945. Also that he be paid at the rate of time and one half between 4:30 P. M. and 12 midnight for the above period.

JOINT STATEMENT OF FACTS: Glanis Snyder, the claimant in this case, was regularly assigned and working as Assistant Signal Maintainer, with headquarters at Eastwick, Pa., regular assigned working hours from 8:00 A. M. to 4:30 P. M..

Bulletin No. 2, dated January 18, 1945, was issued on the Baltimore East End Seniority District, advertising position of second trick maintainer at Locust Street, Philadelphia, Pa., with assigned working hours from 4:00 P. M. to 12 midnight, and account no applications being received in response to this bulletin, Mr. Snyder was assigned to this position by bulletin No. 5, dated February 20, 1945, under the provisions of Rule 48 of the then current agreement.

The seniority roster on the Baltimore Seniority East End District for 1945 shows 41 men with seniority in the Signalmen's class and Mr. Snyder ranks No. 21 in this class.

POSITION OF EMPLOYES: There is in existence an Agreement between the parties to this dispute dated August 1, 1939 which among other things provides the following:

RULE 9: Employes will not be required to suspend work during regular hours to absorb overtime.

RULE 14: Overtime hours, continuous with regular working hours, shall be computed on the actual minute basis at the rate of time and one-half. Employes will not be required to work more than ten (10) hours without being permitted to have a second meal period. Time taken for meals will not terminate the continuous service period.

RULE 23: Employes released from duty and notified or called to perform work outside of and not continuous with regular working hours, will be allowed a minimum of two (2) hours at time and one-half time, and if held longer than two (2) hours they will be paid time and one-half time. The time of employes so notified will begin at the time required to report and end when released. Time of employes so called will begin at the time called and end at the time

In short, this Honorable Division held that in Award No. 2535, the position involved was a temporary position, and the assignment of the claimant involved therein was a temporary assignment and that therefore the claimant was entitled to necessary expenses while away from home.

IT SHOULD BE NOTED THE CLAIM AT HAND DOES NOT INVOLVE A TEMPORARY POSITION. THE POSITION WAS THERE BEFORE THE CLAIMANT OCCUPIED IT AND IT REMAINED AFTER HE VOLUNTARILY BID OFF IT.

FURTHER, WHEN THE CLAIMANT LEFT THE POSITION IN DISPUTE HE DID NOT RETURN TO HIS FORMER POSITION. IN FACT HE HAD REJECTED TWO OPPORTUNITIES TO RETURN TO HIS FORMER POSITION.

The Employes here contend the claimant held ownership to a position which he was required to relinquish in order to fill a vacancy at the direction of the Carrier, and the Employes contend that the claimant therefore is entitled to compensation based upon his ownership rights to the position from which he was so removed.

The Carrier has demonstrated here that to the best of its ability it fairly applied the provisions of Rule 48(a). The Carrier cites Award No. 2535 in support of the propriety of this application of Rule 48(a).

The Carrier has further demonstrated that the claimant found here voluntarily accepted the position assigned him in that he did not choose to return to his former position, although he had two opportunities to do so. The Carrier also demonstrated it had no reason to think otherwise since the first claim was not submitted until August 3, 1945 after the claimant had occupied the disputed position for approximately seven months.

The Carrier requests the Division to find this claim as being one without merit and to deny it accordingly.

Exhibits not reproduced.

OPINION OF BOARD: Claimant Snyder had the position of Assistant Signal Maintainer at Eastwick, Penna., with hours 8 A.M. to 4:30 P.M. The position of Signal Maintainer at Locust Street Tower, Philadelphia, with hours 4 P.M. to midnight was bulletined. There were no applicants for this position. Accordingly Carrier designated Snyder as the junior qualified man and assigned him to the position on February 20, 1945.

The allowance of the claim turns on whether or not Carrier acted within the terms of the Agreement by assigning Snyder to such position, which he did not bid for, and if so whether such assignment was a permanent one. Carrier relies on Rule 48 (a):

"New positions and vacancies will be bulletined for a period of ten (10) days on the seniority district on which they occur within ten (10) days from the date they occur (except that temporary vacancies need not be bulletined until after expiration of thirty (30) days from the date such vacancies occur) and will be awarded to the qualified applicant having the greatest seniority in the class specified in the bulletin. If no applications are received, the junior qualified man will be required to accept the position. If there are no qualified men on the district, then the bulletin will be extended to the next adjoining seniority districts. New positions and vacancies may be filled temporarily pending assignment by bulletin."

Claimant contends that he ranked No. 21 on the seniority list and since there were 20 other employes in the same class who ranked beneath him on the seniority list he was not the junior employe.

However, in filling a position for which there are no applications, Carrier is not required under the rule to select the man at the bottom of the seniority list, the junior on the whole list, but is empowered to select

the junior of those who are qualified, or as the rule states, "the junior qualified man." There can be no doubt as to this because the rule is plain and unambiguous. It even permits the Carrier to go outside the seniority district if there is no qualified man on the district, and extend the bulletin to adjoining districts.

The principle is well settled that the duty of deciding who is the qualified man is upon the Carrier in the first instance. After Carrier has selected such man, then the employes have the right to question Carrier's selection. But the burden of showing that such selection was unreasonable or unfair rests upon the employes, and they must support such a charge by proof. We might observe, however, that Carrier's right to select in the first instance the junior qualified man is subject to the restriction that Carrier must act reasonably, fairly, and in good faith without bias or prejudice. If it is shown that Carrier's decision is unreasonable or unfair, employes would be entitled to relief.

The record before us contains no affirmative proof of any kind that any man ranking below Snyder was in fact qualified for the position at Locust Street Tower so we must accept Carrier's decision that Snyder was the junior qualified man as proper and reasonable. See Awards 110, 237, 2031, 2058, 2491, 3151.

It is apparent from the record, however, that Snyder, who was also Local Chairman, received the assignment in February, accepted it without protest, and not until August did he lodge his claim with Carrier. It seems to us that the failure to protest sooner constituted an implied recognition at least of the propriety of Carrier's decision in assigning Snyder to Locust Street Tower. We cannot believe that if Carrier's action had been so glaringly unreasonable and unjust that Snyder would have accepted it without protest and then acquiesced in for six months without even questioning it, Snyder's conduct may properly be considered in support of the reasonableness of Carrier's action.

On September 6, 1945, Snyder was assigned to another position which he had bid in, and one Thacker, No. 38 on the seniority list, or 17 numbers below Snyder was assigned to Locust Street Tower. Claimant would contend that this is positive proof that Snyder was not the junior of the qualified men when he was assigned to Locust Street Tower. However, we cannot accept it as such. There is no showing that Thacker was qualified for that position at the time Snyder was assigned some six months prior.

Claimants further contends that even if Carrier properly assigned him, still such assignment called for service outside his regular established working hours of 8 A. M. to 4:30 P. M. (at Eastwick) and that he is entitled to the penalties claimed under the rules. He relies on Award 2535. The opinion in that award upheld the assignment of an employe to a position he did not bid on under the same Rule 48 (a) but then allowed expenses for board and lodging under another rule on the theory, as we construe it, that the employe was temporarily sent away from his home station. That award cannot apply to this case.

Under Rule 48 (a) the junior qualified man is "required to accept the position" to which Carrier assigns him. Thus when Snyder was assigned to Locust Street Tower that became his permanent position so he necessarily relinquished his rights in his former position at Eastwick. Such being the case there is no basis to support the penalty payments sought in this claim.

Accordingly the claim must 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 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 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 26th day of February, 1948.