

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 J. D. Nethken be allowed straight time between the hours of 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M., March 6, 1944 to April 15, 1945. Also that he be paid at the rate of time and one-half between 4:30 P. M. and 12:00 Midnight for the above period.

JOINT STATEMENT OF FACTS: On or about January 24, 1944 Mr. J. D. Nethken, was working by regular assignment, as a signalman in the signal gang under the direction of signal Foreman Lowe with camp cars as headquarters, regular assigned working hours from 8:00 A. M. to 4:30 P. M.

Bulletin No. 4, dated January 18, 1944, was issued on the Baltimore east-end Seniority District advertising position of second trick maintainer at Lee Street Tower, Baltimore, Md., with assigned hours from 4:00 P. M. to 12:00 Midnight. Mr. Nethken was not an applicant but was assigned this position by Bulletin No. 6, dated March 6, 1944, under the provisions of Rule 48 of the then current agreement.

The Seniority roster on the Baltimore east-end Seniority District for 1945 shows 41 men with seniority in the Signalmen's class and Mr. Nethken ranks No. 32 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: Employees 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. Employees 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: Employees 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 employees so notified will begin at the time required to report and end when released. Time of employees so called will begin at the time called and end at the

The Employees 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 Employees 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, approximately seventeen months from the date the claimant was assigned the disputed position, and approximately four months after he vacated that position.

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 Nethken was working as a Signalman in a signal gang with camp cars as headquarters, hours 8:00 A. M. to 4:30 P. M. The position of Signal Maintainer at Lee Street Tower, Baltimore, Maryland, hours 4:00 P. M. to Midnight, was bulletined and there were no applications received for the position. Accordingly, on March 6, 1944, claimant was permanently assigned to this position under the provisions of Rule 48 (a), as follows:

“(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 the 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.”

At the time of the assignment, claimant was No. 32 on the seniority list of 39. There were seven other employees in the same class junior in seniority to claimant. However, Rule 48 (a) does not require the carrier to assign the junior on the seniority list, but permits the carrier to designate the junior of its qualified men, and there is no proof in the record that any of those men junior in seniority to claimant were in fact qualified for the position.

The claim, contentions and facts in this case present the identical issues we have passed on in a companion case in Award No. 3798.

Inasmuch as the award in that case denied the claim, the same award must be entered in this case, and for the same reasons.

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