

Award No. 4324
Docket No. SG-4120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that C. A. Gill should be awarded the position of Foreman T. & S. in the Regional Telegraph & Signal Repair Shop, Logansport, Indiana, advertised on bulletin No. 119, dated April 2, 1946, and assigned under date of April 29, 1946, by Award No. 119 to R. G. Army, an employe with no seniority in this seniority district.

(b) Claim that C. A. Gill should have a seniority date in the Foremen's class established on the Logansport Regional Telegraph & Signal Repair Shop roster to correspond with the date of Award No. 119.

(c) Claim that C. A. Gill should be compensated for the difference between the mechanic's rate of pay and the Foreman's rate of pay from effective date of Award No. 119.

EMPLOYES' STATEMENT OF FACTS: The vacant position of Foreman T&S, Regional Telegraph & Signal Repair Shop, Logansport, Indiana, was advertised to all Telegraph and Signal Department employes in the Western Region on bulletin No. 119, dated April 2, 1946, in accordance with the provisions of Paragraph 4 of the agreement providing for performance of work and filling of positions at the Regional Telegraph & Signal Repair Shop, Logansport, Indiana, effective June 16, 1944. A copy of the agreement effective June 16, 1944 is attached hereto and identified as Brotherhood's exhibit No. 1.

The applications received on this bulletin included the following:

R. G. Army, Foreman T&S, Regional Telegraph & Signal Gang seniority district.

C. A. Gill, Signalman, Regional Telegraph & Signal Repair Shop seniority district.

The seniority of these men as of April 2, 1946, was as follows:

Name	Division	Foreman	Signalman	Assistant Signalman	Helper
R. G. Army	Reg'l T&S Gang	10-11-19	12-27-15	12-27-15	12-27-15
C. A. Gill	Indianapolis		4- 1-23	7- 6-22	7-16-21
C. A. Gill	Reg'l T&S Shop		10- 4-28		10- 4-28

Mr. Gill protested the award of this position to Mr. Army and his protest was denied.

CONCLUSION

The Carrier has shown that under the applicable Agreements between the parties the Claimant is not entitled to the position or compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The two agreements which apply to this controversy are the effective Telegraph and Signal Department Agreement of June 1, 1943, hereafter referred to as the effective Agreement, and the Supplemental Agreement of June 16, 1944. The Supplemental Agreement was entered into in order to provide for the special needs of the Logansport Shop Seniority District, hereinafter referred to as the Shop District. The Shop District is the only seniority district in the Western Region which is covered by the provisions of the Supplemental Agreement; thus it can be said that no other district in the Western Region has exactly the same contractual status as the Shop District, and that the solutions used in answering questions arising in the Shop District might or might not be the same as those used in districts not covered by the Supplemental Agreement.

The question to be decided here is one of the proper application of the rules involved. There is an honest difference of opinion between the parties as to their proper application. At the outset it can be said that the seniority provisions of the two agreements here involved are somewhat different from those more commonly found in other agreements. It should be kept in mind that there are two agreements which must be considered together in this case; they should be construed, if at all possible, to give effect to all of their provisions. Also, it should be remembered that the Supplemental Agreement was set up to cover a particular situation, which resulted from the fact that employees for the Shop District are drawn from all of the seniority districts in the Western Region.

Article 4, Section 5(a) of the effective Agreement provides that each operating division shall constitute a separate seniority district, and that the exercise of seniority held in a particular seniority district shall be confined to such district. Article 2 of the Supplemental Agreement provides that the Shop district will constitute a separate seniority district. But other provisions of the Supplemental Agreement make it clear that the Shop District is not in all respects the same as the other seniority districts. Article 3 of the Supplemental Agreement and paragraph 6 of Article 4 of the Supplemental Agreement make it possible for employees in the Shop district sometimes to have seniority rights in two different seniority districts at the same time. Paragraph one (1) of Article 4 of the Supplemental Agreement provides that Shop District vacancies will be advertised to all employees in the Western Region; in districts other than the Shop District vacancies are advertised only in the district where the vacancy occurs.

The vacancy that occurred in the Shop district was advertised throughout the Western Region. The position was awarded to R. G. Army, an employee who held seniority in the foreman class in the Regional T. & S. Gang, hereafter referred to as the Gang District. Army had no seniority in the Shop District. Claimant, C. A. Gill, held seniority in the signalman and lower classes in the Shop District, but held no seniority in the foreman class. Article 4, Section 3(b) of the effective Agreement provides that temporary service in a higher class shall not establish seniority in that class. Claimant had nothing more than temporary service in the foreman class. Also, Army had seniority in each class that Claimant had seniority, and in each instance the seniority of Army outranked that of Claimant.

Paragraph 5 of Article 4 of the Supplemental Agreement provides:

"In the awarding of positions advertised in accordance with the foregoing, first consideration will be given to bids received from

qualified employees with seniority in the Regional Telegraph and Signal Repair Shop seniority district." (Underscoring added.)

Then the next paragraph, paragraph 6, of the same Article 4, provides:

"In the event no bids are received from employees with seniority in the Regional Telegraph and Signal Repair Shop seniority district, applications received from qualified employees in other seniority districts in the Western Region will be considered on the basis of their seniority in their home seniority district, and employees so assigned will establish a seniority date in the Regional Telegraph and Signal Repair Shop seniority district as of the date awarded such position or vacancy. Such employees will retain and continue to accumulate seniority in the respective Telegraph and Signal Department classes in the seniority district from which transferred and may bid on advertised positions in that seniority district. In reduction of force, such employees may return to the seniority district from which transferred only in the event they are unable to hold a position in the Regional Telegraph and Signal Repair Shop in the class in which employed immediately prior to reduction in force." (Underscoring added.)

The Carrier contends that paragraph 6 of Article 4, quoted immediately above, made is proper for it to award the position to Arney. It contends that no "bid" was received from an employee in the Shop District who was qualified to bid. This contention can be sustained only if it is found that the parties intended that there should be a distinction in the use of the word "bid" in paragraph 5, and the use of the word "application" in paragraph 6. The Carrier contends that a distinction was intended, and that only certain employees were qualified to bid, although any employee could make application; the Carrier contends that although bids and applications are received at the same time, bids take priority over applications, and that some applications take priority over other applications. It is a general rule of construction that where different words are used different meanings will be held to have been intended if the application of such different meanings produces a reasonable result. While it is true that the words "bid" and "application" are sometimes used as synonymous, the Board believes that as used in this Agreement they have distinct and separate meanings, and that only employees having seniority in the foreman class were intended to be qualified to bid. Article 4, Section 1 of the effective Agreement sets up five separate seniority classes; the foreman class is set up as one of the five separate classes. The contention that only certain employees have bidding rights in the foreman class is supported by Article 4, Section 20(f) of the effective Agreement, which provision is as follows:

"Bidding Rights. (f) An employee reduced to a lower class in force reduction shall have no bidding rights in the higher class until he returns to an advertised position or permanent vacancy in such class in accordance with Section 9(a) of this Article. * * *"

Section 9(a) of Article 4 is not material here. Section 20(f), quoted above, makes it apparent that the negotiating parties intended to restrict the right to bid. While Section 20(f) has specific reference to the bidding rights of employees demoted in force reductions, it shows that not even all employees having foreman seniority in the Shop district were qualified to bid on the vacancy in question. The denial of bidding rights to some employees having foreman seniority is very strong reason for concluding that the parties intended that employees not having foreman seniority should not have bidding rights to foreman positions. Since Arney was qualified to bid for a foreman position in the Gang district, he was qualified, by virtue of paragraph 6 of Article 4 of the Supplemental Agreement, to make application for the position in the Shop district, and it was proper for the Carrier to award the position to him. Claimant contends that Article 4, Section 18(b) of the effective Agreement required that he be promoted to the foreman position. Had there been no application from an employee qualified to apply under paragraph 6 of Article 4 of the Supplemental Agreement, there would have

been need to promote; but as has been seen, the position was filled before the promotion stage was reached.

The Board has noted that the very same procedure that the Carrier used here was used in filling a vacancy advertised on July 13, 1944. No protest against the procedure was received from Claimant, or from any other employee, although Claimant was one of the employees who made application for the position. What the intention of the parties was, at the time of the signing of the agreement, is a difficult matter to determine, and the conduct of the parties after the agreement had been signed is very important. The fact that the Carrier applied this method soon after the Supplemental Agreement was signed, at a time when the intent of the parties would still be fresh on their minds and when violation of that intention likely would be objected to, is persuasive to the Board.

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 Agreements.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1949.