

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: (a) Claim that Mr. C. E. St. John, the senior qualified bidder holding seniority in the Moline Signal Shop (seniority district identified in paragraph (b) of Rule 40) should have been awarded the position of Signal Shop Foreman advertised on Bulletin No. 62, issued by Signal Engineer, Mr. C. R. Swenson, dated July 2, 1947.

(b) Claim for the difference in compensation between the proper applicable monthly Signal Foreman's rate and the rate of Leading Signaller or other current rate, for all time Mr. St. John is denied such position.

EMPLOYEE'S STATEMENT OF FACTS: On July 2, 1947, a permanent vacancy in the position of Shop Foreman, Moline Signal Repair Shop, was bulletined for seniority choice in accordance with the provisions of the current Signalmen's Agreement. The assigned working hours are from 7:00 A. M. to 12:00 Noon and 1:00 P. M. to 4:00 P. M. The regular days off duty are Sundays and the seven (7) specified holidays. The salary at that time was \$328.70 per month and was increased to \$366.42 per month effective September 1, 1947.

This Foreman's position was awarded to Mr. C. C. Jensen on July 12, 1947, an employee who holds no seniority or rights in the Moline Signal Repair Shop. His name and seniority did NOT appear on the Moline Signal Repair Shop seniority roster.

Other bidders for this vacancy were Messrs. L. E. Fort, E. T. Large, G. E. Moore, C. E. St. John, F. W. Laverty, W. C. Elms, C. E. Healy, and L. W. Schildmiller.

C. E. St. John and F. W. Laverty were the only bidders whose names and seniority appear on the Moline Signal Repair Shop seniority roster as issued by the Signal Engineer's office for the year 1947. The Moline Signal Repair Shop seniority roster for 1947 is herewith reproduced and is in accordance with the provisions of Rule 40, part (b).

"ROCK ISLAND LINES

Office of the Signal Engineer
Chicago, Ill.

1947 Seniority Roster as provided for in agreement between the
Chicago, Rock Island and Pacific Railway Company and the Em-

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this case discloses:

AWARD 2214

1. "Elms had both Division and system seniority for all positions below that of foreman, * * * but no seniority as foreman on either a Division or on the system."

2. Mr. Jensen had foreman's seniority on the system seniority roster.

INSTANT CASE

1. Mr. St. John has both Shop (Division) and system seniority on all positions below that of foreman, but no seniority as foreman in either the Shop (Division) or on the system.

2. Mr. Jensen has foreman's seniority on the system seniority roster.

A comparison of the questions which the Board found to be at issue in Award 2214 and the questions at issue in the instant case reveals:

AWARD 2214

1. "We are not called upon to say what would be the right of the parties if Elms had seniority as a foreman on either roster for admittedly

INSTANT CASE

1. The Board is not called upon to say what would be the right of the parties if Mr. St. John had seniority as a foreman on either roster for

- (c) A system seniority district, composed of all seniority districts on the system, for employes working under the supervision of the Signal Engineer and engaged on larger projects covering installing, removing or the changing of a signal system or a substantial part thereof, will be established."

RULE 56. "Prior to employing new men for new positions or vacancies on seniority districts (a) and (b) such positions shall be bulletined to all employes on the system and assignments will be made, if any, per comparative system seniority ranking.

Assignments to positions on Signal Engineer's seniority district shall be made on a comparative system basis, except employes on their home seniority districts shall be given preference."

RULE 61. "Promotions to positions coming within the scope of this agreement shall be based on ability and seniority; ability being sufficient, seniority shall govern."

RULE 64. "Employes are entitled to promotion to positions covered by this agreement only on the district over which their seniority prevails except that employes of all districts will be given preference in line with their comparative system seniority and over new men on all positions created in seniority districts Rule 40 (c)."

Carrier contends that this matter is not properly here for our consideration because no action was taken by the Brotherhood within 90 days after a decision was rendered by the highest officer designated by the Carrier to handle appeals, as provided in Rule 77 of the effective Agreement.

Rule 77 is as follows:

"After the highest officer designated by the management to handle appeals has rendered his decision, if further action, as permitted by this agreement or the Railway Labor Act, amended, is not taken within ninety (90) days from date the decision is furnished the employe and his representative by such officer, all rights hereunder shall by such failure be forfeited by all parties."

If this rule were here applicable it would control as the decision appealed from was rendered on October 8, 1947 and no further action was taken thereafter by the Brotherhood until August 30, 1948. However, read in conjunction with Rules 73, 74, 75 and 76 under Article VII of the parties' effective Agreement it becomes apparent that Rules 74, 75, 76 and 77 provide a complete procedure for cases coming within Rule 73, that is, disciplinary matters and is not applicable to this type of case.

On the merits Carrier relies primarily on Award 2214 of this Division as an interpretation of the applicable rules of the parties' effective Agreement justifying the action which it has here taken. But the position filled in that award was a system foreman's position under Rule 40 (c) and, as therein held, subject to system seniority under part two of Rule 56. If the position here bulletined came within the class of a system foreman's position then that award would be applicable and controlling, but such is not the situation. The position of Shop Foreman here involved comes within Rule 40 (b) and in the first instance subject to the seniority rights of the men of that seniority district. If no qualified bids were received from men of that district then it would be subject to the first part of Rule 56 and open to all employes of the system on the basis of system seniority. But there being no question as to Claimant's fitness, Rule 61, he was entitled to be assigned to the position on which he bid. See Rule 64. To hold otherwise would make every district position subject to system seniority and destroy the benefits and rights of district seniority.

In view of the foregoing, we find the position of the Brotherhood well taken and that the claim should be allowed.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.