

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood that Scioto Division Maintainer W. A. Allred should have been returned to his position at Lucasville, Ohio, when W. B. Stinson returned from military service and resumed duty on his regular position of third trick car retarder maintainer at Portsmouth, Ohio, on January 27, 1946.

JOINT STATEMENT OF FACTS: On December 12, 1942, W. B. Stinson, third trick car retarder maintainer at Portsmouth, Ohio, was inducted into military service. His vacancy was bulletined as a temporary one and was bid in by Signal Maintainer W. A. Allred, who, at that time, was located at Lucasville, Ohio. Maintainer Allred's vacated position was then bulletined as a temporary vacancy, and was so considered at the time of Stinson's return to the service. Maintainer Stinson was discharged from military service and returned to his position on January 27, 1946, then filled by Allred. Maintainer Allred was permitted to displace on a permanent position filled by Maintainer Keys as Chillicothe, Ohio, this position having been bulletined as a permanent vacancy during Maintainer Stinson's absence in military service.

POSITION OF EMPLOYES: It is the position of the Brotherhood that when W. A. Allred was released from temporary service in the Car Retarder Maintainer's position at Portsmouth, because of the return of W. B. Stinson to his regular position, he (Allred) should have returned to the position from which taken as provided in Section 8, Article 3 of the current Signalman's Agreement. For ready reference we are quoting Section 8, Article 3:

"Employees assigned to temporary service may, when released, return to the position from which taken, without loss of seniority."

Allred was only temporarily assigned to the Car Retarder Maintainer's position at Portsmouth because the incumbent (Stinson) was only temporarily absent account of military service as provided in Section 3, first paragraph, of the Military Agreement which provides among other things, that an employee returning to railroad service following their release from military service will be permitted to return to their former position.

Stinson returned to his former position, therefore, he did not exercise his prerogative as further provided in the Military Agreement. The last sentence in Section 3, first paragraph, provides that an employee displaced by the return of employees from military service to railroad service, may exercise their seniority in the same manner. Stinson did not exercise

qualify them for same. Employees displaced by their return may exercise their seniority in the same manner.

5. Provisions of existing agreements governing service and working conditions, in conflict with the foregoing are to be considered as temporarily superseded or suspended during the life of this memorandum of agreement."

Under "3" next above quoted, Maintainer Stinson, upon his return from military service, was entitled to return to his former position temporarily held by Allred, or within three days after his return he was privileged to exercise his seniority rights in accordance with schedule rules to any position bulletined during his absence if his ability and fitness qualified him for same. Stinson elected to return to his former position. Allred, who was displaced by Stinson's return, was then privileged by the language of the last sentence of "3" to exercise seniority in the same manner as Stinson was privileged to do. Allred did this by exercising his rights to the position as maintainer at Chillicothe which had been bulletined as a permanent vacancy within the period of time covered by Stinson's absence in military service.

The Carrier respectfully requests that Employees' claim be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: On December 12, 1942, W. B. Stinson, third trick car retarder maintainer at Portsmouth, Ohio, entered military service. His position was bulletined as a temporary vacancy and bid by W. A. Allred, the occupant of a permanent position at Lucasville, Ohio. This latter position was in turn bulletined as a temporary position and continued as such to the date of Stinson's return from military service on January 27, 1946. Upon his return, Stinson elected to return to his old position at Portsmouth occupied by Allred. Allred thereupon exercised his seniority rights to a permanent position of signal maintainer at Chillicothe, Ohio, a position which had been bulletined and filled while Stinson was in military service. The Organization contends that under the applicable agreement, Allred should have been required to take his old position at Lucasville.

The controlling agreement is designated as Memorandum Agreement dated May 1, 1941 and made effective August 1, 1939. Applicable paragraphs thereof provide:

"Signal employees, other than assistant signalmen, assistant signal maintainers and helpers, returning to the service of the railroad following their release or rejection from such military or naval service will be permitted to return to their former positions, or may, upon return or within three (3) days thereafter, exercise seniority rights in accordance with schedule rules to any position bulletined during such absence if their ability and fitness qualify them for same. Employees displaced by their return may exercise their seniority in the same manner."

"Provisions of existing agreements governing service and working conditions, in conflict with the foregoing are to be considered as temporarily superseded or suspended during the life of this memorandum of agreement."

It is clear that the provisions of the Memorandum Agreement control over schedule rules by its own terms. The present case turns on the meaning of the first quoted paragraph.

It is plain that Stinson had the right upon his return to do either of two things—return to his former position or exercise his seniority rights to any position bulletined during his absence which he was qualified to fill. He chose to return to his old position which had the effect of removing Allred therefrom.

The last sentence of the first quoted paragraph provides that "employees displaced by their return may exercise their seniority in the same manner." This means that when Stinson displaced Allred at Portsmouth, that Allred could also do one of two things,—return to his former position or exercise his seniority rights to any position bulletined during the absence of Stinson which he was qualified to fill. He chose to exercise his seniority on the maintainer's position at Chillicothe. This is clearly correct under the wording of the Agreement.

The Organization contends that the questioned language means that when Stinson returned to his former position that Allred should in like manner return to his. The rule says, however, that employees **displaced** by **their** return may exercise their **seniority** in the same manner. This clearly gives Allred the same alternative rights that were given to Stinson. It is true that Allred had a chance to bid for the positions bulletined during Stinson's absence in military service. He was not required to do so, however, until he was relieved by the owner of the position. Stinson may never have returned to the employ of the Carrier or he may have chosen to exercise his seniority to some other position, in either of which events Allred undoubtedly preferred to be the occupant of Stinson's position. The Agreement evidently was written with these possibilities in mind when it preserved to the occupants of temporary vacancies resulting from military service, the right to exercise seniority on all positions bulletined during that period. The Memorandum of Agreement gives him that right and consequently the Carrier acted correctly in recognizing his claim to the maintainer's position at Chillicothe.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1949.