

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Pennsylvania System Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that Earl Perkins, Signalman-Test, be paid the difference between the amount earned and the amount he would have earned had he been used as a Foreman for the period of seven days, December 2, 1946, to December 8, 1946, inclusive.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Earl Perkins, is the incumbent of a regular assignment as Signalman-Test with headquarters at Terre Haute, Indiana. The regular working hours of the claimant on this position are from 7:00 A.M. to 12:00 Noon, and from 12:45 P.M. to 3:45 P.M. daily, except Sunday and holidays.

J. G. Ewing is the regular incumbent of a position of Foreman, Telegraph and Signal, with headquarters in camp cars. The regular working hours of this position are from 7:00 A.M. to 12:00 Noon, and from 12:45 P.M. to 3:45 P.M. daily, except Sundays and holidays.

Foreman J. G. Ewing was on vacation on December 2, 1946, to December 8, 1946, inclusive. During that period H. Laurinat was used on the temporary Foreman vacancy while J. G. Ewing was on vacation.

Neither Earl Perkins nor H. Laurinat have seniority in the Foreman class. Earl Perkins is senior to H. Laurinat in the Signalman, Assistant Signalman and Helper class.

Claim was made that Earl Perkins, Signalman-Test, be paid the difference between the amount earned and the amount he would have earned had he been used as a Foreman for the period of seven days, December 2, 1946 to December 8, 1946, inclusive.

This claim was progressed in the usual manner with the Carrier without securing a satisfactory settlement.

An agreement bearing effective date of June 1, 1943, is by reference made a part of the record in this dispute.

POSITION OF EMPLOYEES: It is the contention of the Brotherhood that the Carrier did not comply with the provisions of the current agreement covering the Telegraph and Signal Department employees of this Carrier when it failed to assign Signalman-Test Earl Perkins, a senior employee to

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: This case presents the question whether this Agreement requires the Carrier to apply seniority in filling a temporary vacancy in a Foreman's position during his vacation. Neither the Claimant nor the signalman selected to fill the vacancy had any seniority in the foreman's class; but of the two, Claimant was senior in their own class. It is conceded by the Carrier that Claimant possessed the necessary qualifications; although the Carrier says it did consider the signalman selected to be better qualified by reason of prior experience in the foreman's class.

FIRST. The vacancy in question was one of seven days duration. Article 4, Section 20(b) covers the subject of filling vacancies of thirty days or less duration. But it goes no further than to provide that such vacancies "may" be filled by available employees reduced or furloughed, or if none such, then by assistant signalmen who have completed their four year training period. Since neither of these two classes of employees existed here, the Carrier argues that seniority does not govern and that such a vacancy could be filled at the Carrier's discretion.

There is nothing in Article 4 which indicates any intention to free vacancies of thirty days or less duration from the application of seniority. The special preference accorded by Section 20(b) to available reduced or furloughed employees and to assistant signalmen is permissive only and is not inconsistent with the general application of seniority. Moreover, it is well settled that seniority governs, notwithstanding the provision of Section 20(a) that vacancies of thirty days or less duration need not be advertised (Awards 3232 and 4571, approving Awards 132, 2490, 3271 and 3538, and overruling Awards 1124, 1150 and 1177). Finally, established vacations are or less than thirty days duration and the vacation agreement (Article 12(b)) provides that "effort will be made to observe the principle of seniority" when the position of a vacationing employee is to be filled and a regular relief employee is not utilized.

We therefore conclude that the Claimant's seniority rights were not rendered inapplicable by the shortness of the duration of the vacancy.

SECOND: Article 2, Section 18(b) deals with promotions to the foreman class. But the Carrier contends that this Section is inapplicable here.

It is said that promotion is not a temporary thing but permanent in nature and that temporary service in a higher class is therefore not a promotion. Reliance is placed upon Article 4, Section 3(b) which provides that temporary service in a higher class shall not establish seniority except when the temporary service is performed as the result of bulletin and award.

Article 4, Section 3(b) is beside the point here: it is no more than a means of regulating the acquisition of seniority in the higher class. Promotion is a fact established by the transfer of duties and responsibilities, regardless of the prerequisites of the duration.

We therefore conclude that Article 2, Section 18(b) governs temporary promotions to the foreman class.

THIRD. Article 2, Section 18(b) is mandatory: it provides that the senior "shall be selected for promotion to the foreman class" when two or more employees do possess the necessary qualifications. Since it is admitted that Claimant did possess the necessary qualifications, it follows that he should have been selected for the temporary promotion.

Some point is made in the record whether the Claimant had affirmatively put himself on record as desiring a promotion such as this. **In**

giving the "consideration" required by Article 2, Section 18(b), the Carrier is obliged to make determinations of qualification and to apply seniority unless but one employe possesses the necessary qualifications. The seniority rosters are before the Carrier; and the Carrier is in a better position to know in advance when vacancies such as this are about to occur. In these circumstances we do not think that the employe must seek out these assignments in order to protect his senior rights, as employes reduced in class or laid off in force reduction are required to do by Sections 9 and 10 of Article 4 (see Award No. 5255).

FOURTH. The contention of the Carrier that there were others senior to the Claimant in his class is foreclosed by Award 5195.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.