

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Cincinnati Union Terminal Company that:

(a) H. E. Turner be paid the difference between straight-time and time and one-half at maintainer's rate for eight hours each on April 14 and 21 and June 16 and 23, 1947, when he was required to work on his regularly assigned day off duty, and straight-time at top Assistant's rate for eight hours each on April 18 and June 22 and 29, 1947, working days of his regular assignment on which he was required to lay off.

(b) P. W. Van Huss be paid the difference between straight-time and time and one-half at Maintainer's rate for eight hours each day on June 17 and 24 and July 15 and 22, 1947, when he was required to work on his regularly assigned day off duty, and the difference between straight-time and time and one-half at top Assistant's rate for eight hours on date of July 23, 1947, account of being required to change shift, also straight-time at top Assistant's rate for eight hours each day on June 22, and July 16, working days of his regular assignment on which he was required to lay off.

(c) C. E. Davies be paid the difference between straight-time and time and one-half at top Assistant's rate for eight hours each day on April 13 and 20, May 25, June 1, 22, 29 and July 6, 13, 20 and 27, 1947, when he was required to work on his regularly assigned day off duty, and straight-time at top Assistant's rate for eight hours each on April 14 and 21, May 31, June 23 and 30, July 7, 14, 21 and 28, 1947, working days of his regular assignment on which he was required to lay off.

EMPLOYEES' STATEMENT OF FACTS: When this dispute arose, Claimant H. E. Turner was regularly assigned to a position of Assistant Signal Maintainer, with assigned working hours from 7:00 A. M. to 3:00 P. M., with every Monday as his assigned rest day or regular day off duty. On Mondays (his regularly assigned day off duty), April 14 and 21 and June 16 and 23, 1947, he was used temporarily by the Carrier to relieve a Signal Maintainer, for which he was paid Maintainer's rate at the straight-time rate. This claim comprehends the difference between straight-time rate and time and one-half rate for eight hours on the days specified immediately above. On April 18 and June 22 and 29, 1947, Claimant Turner was required by the Carrier to lay off from one of his regularly assigned working days. This claim comprehends payment of eight hours for each day at the Assistant Signal Maintainer's straight-time rate.

Rule 27—RECOGNITION OF SENIORITY

“(a) Promotions to positions within the scope of this agreement, other than Foreman, shall be based on ability and seniority; ability being sufficient, seniority shall govern.

(b) Position of foreman shall be bulletined in manner provided for other positions under this agreement. They shall be awarded on fitness and ability to organize and progress the work to which assigned. Such fitness and ability being sufficient, seniority shall prevail.

(c) The term ‘promotion’ as used in this agreement shall be understood to mean advancing an employe from one seniority class to a higher seniority class.”

Carrier complied with the provisions of this rule in promoting the three claimants to a higher class on a seniority basis.

Claimant Van Huss had not completed his four years as an assistant but was in his second six months of his fourth year and being the next senior employe following Turner, he was offered and he requested the vacancies.

Carrier respectfully urges claim be denied.

All facts and arguments herein presented have been made known to the representatives of the Union.

OPINION OF BOARD: Claimants are three employes in the signal department. Two of them, Turner and Van Huss, held regular assignments as Assistant Signal Maintainers. The third, Davies, was regularly assigned as a Signal Helper. Turner and Van Huss were used as Maintainers during the vacation periods of regularly assigned Maintainers. Davies was used as an Assistant Maintainer to fill vacancies in such positions due primarily to the fact that the regularly assigned Assistant Maintainers were being used as Signal Maintainers. All three claimants received the higher rates of pay of the positions on which they were used and were given the rest days of the positions they were filling. The claim here made is that each should be paid time and one-half for each day worked on the higher rated positions which was on a rest day of his regularly assigned position and straight time for each rest day of the higher rated position which fell on a work day of his regularly assigned position. The Carrier asserts that claimants requested the higher rated work. One Claimant states that he was directed to temporarily fill the higher rated position. Whether Claimants requested to work the higher rated positions or were directed to do so by the Carrier does not appear to us to be a controlling factor. If Claimants had a right by virtue of their seniority to perform the higher rated work, the Carrier is obligated to give it to them and to suffer reparative penalties for failure to do so.

This Board has repeatedly held that senior employes must be used to fill higher rated positions when the regularly assigned occupants are absent. It is a right which grows out of seniority and which the Carrier must respect to avoid penalties. The Claimants in the present case were entitled to perform the work of the higher classification during the vacation periods involved and claims for loss would have been valid if the Carrier had failed to recognize their seniority.

The question for determination is whether Claimants were being improperly used on their regularly assigned positions or whether they were properly assigned temporarily to higher classified positions to which they were entitled by virtue of their seniority. There can be no doubt of the correctness of the position of the Organization if Claimants were occupying their regularly assigned positions during the periods involved in the claim. We think the record shows clearly that claimants were temporarily assigned to higher rated positions. They filled regular assignments of occupants of

higher rated positions to which they were entitled under the controlling agreement. In so doing, under the circumstances here shown, they assumed all the conditions of the higher-rated positions, including the hours assigned, rest days, and rates of pay if they exceed those of their regular assignments. If this were not so, an assistant maintainer assigned to a second shift who holds seniority entitling him to work the first shift of a Signal Maintainer temporarily absent, would be entitled to time and one-half for all work performed as a maintainer because it was outside the hours of his regular assignment and straight time pay for his regular assignment because he was required to lay off on his regularly assigned working days. No such result was contemplated by the Agreement and no such dilemma should be created by interpretation. We think that in the present case, claimants were clearly assigned temporarily to higher rated positions to which they were entitled by seniority. We realize fully that in some cases it is difficult to determine whether an employe is working a higher classified position temporarily or whether he is being improperly used on his regular assignment. This presents a question of fact. In the case before us, claimants were clearly assigned to higher classified positions during vacation periods of the occupants of those positions. The Agreement requires the Carrier to assign the senior employes qualified to perform the work. Award 2720. This the Carrier did when it assigned the Claimants. When Claimants take the position, they assume the added responsibilities, receive the higher compensation, work the hourly assignment of the position and take the rest days assigned those positions. This result is also in accord with Rule 12 (a), Vacation Agreement, and the long-accepted practice on this Carrier. We find no basis for an affirmative award.

This award is based upon the facts stated herein and the rules applied thereto.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of May, 1952.