

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad

(a) That the Company violated Article 4, Sections 9(a) and 20(d), of the Agreement when it failed to award Position No. 628 on Bulletin No. 120, dated November 10, 1949, to W. D. Willard, Maintainer T. & S., who was reduced from the Leading Maintainer's class account of force reduction.

(b) That the Company violated Article 4, Section 20(f), of the Agreement when it accepted a bid for position No. 628 (Leading Maintainer T. & S., Broad Tower, first trick 8:00 A.M. to 4:30 P.M., with ½ hour for lunch period, regular rest days Saturday-Sunday) as shown on Bulletin No. 120, dated November 10, 1949, and awarded and assigned Rhodes to this position on November 21, 1949.

(c) That W. D. Willard be paid eight (8) hours at Broad Tower's rate of \$1.954 per hour for each and every day that C. I. Rhodes has worked position No. 628 (Leading Maintainer, Broad Tower) from and including November 21, 1949, up until such time as correction is made and W. D. Willard is restored to the Leading Maintainer's class.

(d) That W. D. Willard be paid the difference between the straight-time rate and the time and one-half rate that was paid him on the third trick Maintainer's position at Zoo Tower for eight (8) hours on each and every day that he worked the last trick at Zoo Tower from November 21, 1949, Saturday and Sunday included, until correction is made.

EMPLOYEES' STATEMENT OF FACTS: Claimant has a seniority date of Leading Maintainer, T. & S. of May 1, 1939, and held a position in that class until September 21, 1949, when, as result of reduction in forces, he exercised seniority to a position of Maintainer in accordance with Section 8(a) of Article 4, of the T. & S. Agreement. For ready reference, we quote Article 4, Section 8:

"(a) When forces are reduced, or positions are abolished, employees affected thereby may, subject to Sections 1, 2, 3, and 4 of this

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: C. I. Rhodes held seniority as a Leading Maintainer as of December 5, 1930, and held a position as such until January 18, 1943, when he bid onto a position of T. and S. Maintainer, a lower seniority classification.

Claimant, W. D. Willard, held seniority as a Leading Maintainer as of May 1, 1939. He was displaced to the position of T. and S. Maintainer in a force reduction on September 1, 1949.

Both bid for Position No. 628 as a Leading Maintainer bulletined November 10, 1949. Rhodes was assigned to the position.

Section 20 (f) of Article 4 of the Agreement then effective provided that "an employee reduced to a lower class in force reduction shall have no bidding rights in the higher class" until he returns to the higher class under Section 9 (a). That section provides for return to positions or vacancies in seniority order "if no bids have been received from qualified employees for such position or vacancy".

The Agreement contained no provision prohibiting bidding into a lower classification nor for loss of bidding rights in the higher class if one did so. Consequently, Rhodes must be deemed to have been qualified to bid for the job and, having done so, he was entitled to assignment thereto.

We note that the parties subsequently adopted a rule applicable to such situations, Section 20 (g) of Article 4, which is some recognition of the fact that the prior contract provisions did not bar an employee's bidding rights in such cases.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.