

Award No. 9613
Docket No. SG-8972

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the New York, New Haven and Hartford Railroad that:

(a) The Carrier violated the Signalmen's Agreement when on December 6, 1954, it assigned Assistant Signal Maintainer M. L. McCarthy to the position of second trick Signal Maintainer at SS-71, Devon, Connecticut, a position he had not submitted bid for and position which he was not assigned to by bulletin. When the claimant was assigned to this position, the Carrier had senior Assistant Signalmen who should have been assigned the position.

(b) The Carrier compensate M. L. McCarthy at time and one-half the Assistant's rate of pay for each day he was forced by the Carrier to work the position of Signal Maintainer at SS-71 which was a regular assigned day off on his regular assigned bulletined position at SS-62 and that he be paid traveling time for each day from Bridgeport to Devon, Connecticut, and return, while improperly assigned to position at SS-71, Devon, Connecticut.

EMPLOYEES' STATEMENT OF FACTS: On December 3, 1954, Signal Supervisor H. A. Welch wrote Assistant Signal Maintainer M. L. McCarthy, as follows:

"Stamford, Conn.,
December 3, 1954.

Mr. Michael L. McCarthy:

No bids having been received for position of Signal Maintainer, 2nd trick SS-71 as advertised on bulletin #75, dated November 12,

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on the contention that the Agreement was violated because Claimant was assigned to the position in question despite the fact that there were senior Assistant Signalmen who had completed the four years' training period and held seniority in the Signal Maintainer's class. Referring to Rule 5(c) of the Agreement, Carrier contends that the eligible senior Assistants were not qualified for the position.

The record does not show any evidence from which we may conclude that any one of the eligible senior Assistants was qualified to fill the disputed position. Nor does the record support the view that Claimant was selected for assignment to the position because no bids for it were received in response to the advertised bulletin rather than on the basis of consideration of qualifications for the position.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1960.

DISSENT TO AWARD 9613, DOCKET SG-8972

The majority, consisting of the Referee and the Carrier Members of the Division, holds, among other things, that—

“* * * Nor does the record support the view that claimant was selected for assignment to the position because no bids for it were received in response to the advertised bulletin rather than on the basis of consideration of qualifications for the position.”

the fallacy of which is disclosed by that part of the record containing the assigning officer's letter to Claimant reading as follows:

"No bids having been received for position of Signal Maintainer, 2nd trick SS-71 as advertised on bulletin #75, dated November 12, 1954; under the rules of the Signalmen's agreement you are hereby assigned to said position starting Monday, December 6, 1954."

Neither the Carrier nor the Carrier Members in behalf of Carrier cited any rule of the parties' Agreement requiring Claimant or any other employee to give up his right to, or the benefits flowing from, a job that he bought with his seniority in order to fill a position for which no bids are received.

Award 9613, instead of interpreting and applying the rules as written by the parties, tends to write rules for the Carrier which, by a long line of unbroken precedent, is clearly beyond the power and authority of the Division to do. Therefore, I dissent.

/s/ G. Orndorff
Labor Member

**CARRIER MEMBERS' REPLY TO LABOR MEMBER'S DISSENT TO
AWARD NO. 9613, DOCKET NO. SG-8972**

The record shows that the Carrier and Carrier Member handling the case cited Rule 50 of the Agreement between the parties, which requires that assistant signalmen or assistant signal maintainers who complete their four years training course subsequent to December 26, 1943 and who refuse promotion will forfeit their seniority in the assistants' seniority class and be demoted to helpers.

/s/ W. H. Castle

/s/ R. A. Carroll

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ J. F. Mullen