

**Award No. 10172**

**Docket No. SG-9645**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Donald F. McMahon, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement (particularly Rule 46(d) when it assigned Signal Helper T. H. Wine to the Signalman's position advertised in Bulletin No. S-724-55 instead of Signal Foreman W. G. Keyser.

(b) Signal Foreman W. G. Keyser now be assigned to the position of Signalman in Signal Gang No. 1 and the Foreman's position presently occupied by Signal Foreman Keyser be advertised.

(c) Signal Maintainer J. A. Cobel be paid the difference between his present rate of pay and that of Signal Foreman W. G. Keyser, starting January 17, 1955, and continuing so long as this violation continues.

**EMPLOYEE'S STATEMENT OF FACTS:** Under date of December 16, 1955, the Carrier issued Bulletin S-724-55, To All Signal Department Employees, Newark Division Seniority District, reading in part as follows:

"Applications will be received by the undersigned up to 12 o'clock Noon, December 26, 1955 for the following position, which is hereby advertised under provisions of Rule 46 of the Signalmen's Agreement:

|                    |                                   |                       |
|--------------------|-----------------------------------|-----------------------|
| Permanent Position | 1 Signalman                       | Rate \$2.045 per hour |
| Headquarters       |                                   |                       |
| Camp Cars—         | Work consists of installation and |                       |
| Gang No. 1 now at  | Maintenance of signals and in-    |                       |
| East Columbus, O.  | terlocking, Newark and C&N        |                       |
|                    | Division.                         |                       |

Camp cars furnished: Assigned hours 7:30 A. M. to 11:30 A. M. —12 Noon to 4:00 P. M.—Except Saturdays and Sundays and Holidays.

Since the rule expressly does not make a stipulation to furnish copies, it follows that the failure of Mr. Keyser in this case to send a copy of his withdrawal notice to the local chairman did not operate to invalidate the withdrawal notice.

The factual record in this case shows that Foreman Keyser's withdrawal was received two days before the closing time for receiving bids. It must, therefore, be concluded that it was a valid withdrawal. It follows that thereafter Mr. Wine was the senior applicant. Mr. Wine's assignment to the position was proper. The Carrier acted properly when it declined the claim coming from Mr. Cobel.

The Carrier submits that this claim should be declined on the following basis:

(a) Part (a) of the claim should be declined in the absence of any showing of any violation of the Signalmen's Agreement:

(b) Part (b) of the claim should be declined on a showing that Mr. Keyser's withdrawal notice was valid and therefore, Mr. Keyser should not now be assigned to the position of Signalman in signal gang No. 3;

(c) The foreman's position presently occupied by Mr. Keyser should not be advertised;

(d) Part (c) of the claim should be denied on a showing that the Carrier's action here was consistent with the literal language and meaning of the rules appearing in the Signalmen's Agreement.

The Carrier submits that the claim in its entirety is without merit. The Carrier respectfully requests that this claim be declined at all its parts.

**OPINION OF BOARD:** The Record here shows that Carrier, on December 16, 1955, circulated its bulletin to signal Employees, on the Newark Seniority Division, as to a permanent position of Signalman being open to bid by signal Employees, as required under the provisions of Rule 46, of the effective Agreement between the parties. Four Employees submitted bids for the position. Heading the list of such applicants was W. G. Keyser, holding No. 12 rank on the Seniority Roster. Under the rule referred to all applications must be on file with Carrier within thirty days from December 16, 1955.

The record further shows that on December 24, 1955, Carrier received notice of withdrawal of his application filed by letter, from Employee W. G. Keyser.

On December 27, 1955, after the time had expired to file application for the position set forth in the bulletin, Carrier awarded the position to T. H. Wine, the remaining senior applicant seeking the position.

The Organization protested the action of Carrier in awarding the position to T. H. Wine, and contended that Carrier had failed to notify the Local Chairman of the withdrawal of the application by W. G. Keyser, and argues that Rule 46 (d) requires that such notices of withdrawal must be furnished the Local Chairman, and that Carrier by its action in awarding the position to T. H. Wine, has violated the provisions of Rule 46 (d), and that by such

action, the signal Employees on the Division have been adversely affected by the alleged failure of Carrier to notify the Local Chairman of the withdrawal, also to correct the error as contended by the Organization.

It will also be noted in the record, that the claim before us is on behalf of Local Chairman Cobel, but who was not an applicant for the position and allegedly would have bid for the position and would have been receiving Signal Foreman's pay during all the elapsed time.

Carrier contends that it in no way violated the provisions of Rule 46 (d) as relied on by the Organization, and consistently argues that there is no requirement in Rule 46 (d) that Carrier shall notify the Local Chairman of the withdrawal of an application or bid for a position, as such is the case here.

We are of the opinion that the rule does not require such notice be furnished the Local Chairman. We cannot speculate what the parties intended when the rule was negotiated. It is definite that at the time of negotiation the parties intended that such applications for positions be prepared in duplicate with one copy being furnished the designated officer of the Company, and the other copy to the Local Chairman.

The only mention made in Rule 46 (d) as to withdrawals, is in the last sentence of the above rule.

The Board does not have the authority to speculate as to what the parties intended when the rule was written. The parties could have readily made it clear that copies of all applications and withdrawals were required to be furnished the Local Chairman.

The rule as written has no such requirement, and we find the claim as filed is without merit and should be denied.

**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 Carrier did not violate the Agreement as alleged.

#### AWARD

Claim denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November, 1961.

**DISSENT TO AWARD 10172, DOCKET SG-9645**

This Award errs in describing the dispute as one growing out of Carrier's failure to notify the Local Chairman that one of the applicants had withdrawn his application. As the record clearly shows, the Employees never advanced such contention.

Having misstated the issue it is not surprising that the majority, consisting of the Referee and the Carrier Members, should find that Rule 46 (d) does not require Carrier to notify the Local Chairman of withdrawal of applications. The real issue was that there was no valid withdrawal of application since applicant did not give copy of it to the Local Chairman.

The majority says:

"\* \* \* The parties could have readily made it clear that copies of all applications and withdrawals were required to be furnished the Local Chairman."

which is true but inept in light of the last sentence of Rule 46 (d) providing that:

"\* \* \* Withdrawal of applications must also be received before the closing time for receiving bids."

Common sense reasoning would certainly support the inference that withdrawal of applications **must also be received** by the same individuals who received copy of the application.

The interpretation which the majority has placed on Rule 46 (d) gives rise to the absurd proposition whereby the parties have agreed that the Local Chairman is to be informed, by way of copy of application, as to who files application for positions advertised but it is none of his business who the contestants are when the bidding closes. Reasonable minds should not be expected to believe that any such ridiculous outcome was intended by the parties.

This Award departs completely from the universal rule of contract construction that where language used is susceptible of two meanings, one of which will lead to a logical or sensible result, and the other to an illogical or unreasonable result, the former is to be preferred as the result intended by the contracting parties. Therefore, I dissent.

/s/ G. Orndorff  
Labor Member

**REPLY TO DISENT TO AWARD NO. 10172, DOCKET NO. SG-9645**

Award 10172 correctly interprets Rule 46 (d), as written, as containing no requirement for furnishing the Local Chairman with copies of withdrawals

of applications, and this Board lacks authority to write any such requirement therein by interpretation.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ J. F. Mullen