

Award No. 10557
Docket No. SG-9545

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated the Signalmen's Agreement on April 6, 1956, Bulletin No. 10-A, when it failed and/or refused to award the Signalman's position advertised in Bulletin No. 10, dated March 26, 1956, to L. R. Anderson, who was the senior bidder for the position, and instead awarded the position to H. S. Gwinn, an employe junior in seniority to L. R. Anderson.

(b) L. R. Anderson is entitled to the Signalman's position and should be compensated the difference between Signal Helper's rate of pay (he is working Signal Helper's position) and Signalman's rate of pay for all time he is being improperly withheld from the Signalman's position that is, or should be, his by virtue of his senior seniority and qualifications. Also, L. R. Anderson is entitled to and should be assigned to the position of Signalman from which he is wrongfully withheld. [Carrier's File SG-100]

EMPLOYEES' STATEMENT OF FACTS: On July 6, 1955, the claimant was regularly assigned as Signal Maintainer with headquarters at Deepwater, W. Va., with an assigned territory from Mile Post 415 to and including Mile Post 428.

On July 6, 1955, Motor Car M-1440, assigned to the claimant, was struck by Extra No. 8000-8500-8001 East (No. 92) near Mile Post 424 which is near Mt. Carbon, W. Va.

Under date of July 11, 1955, Division Engineer H. S. Talman wrote the claimant advising him to attend an investigation in passenger station at Montgomery, W. Va., at 10:30 A. M., Thursday, July 14, 1955, and advising that he was charged with responsibility in connection with the accident when Motor Car M-1440, in his charge, was struck by Extra No. 8000-8500-8001

requiring the use of motor cars, such as the Signalman vacancy advertised on March 26, 1956, involved in this claim.

3. The Carrier has been extremely lenient in administering discipline to Claimant Anderson

When Anderson's permit to operate motor cars was revoked as result of Board of Inquiry No. HX-D-6826, it was the **second time** his permit had been revoked as result of accident for which he was found at fault.

Without unduly burdening the record, Carrier submits that on August 17, 1952, Leading Signalman L. R. Anderson was in charge of Motor Car 1820 on the Carrier's Chicago Division when as result of switch being improperly lined after use by Anderson's force, Train 2/93, consisting of three unit locomotive, 10 cars and caboose, headed into open switch striking four camp cars in the side track and derailing 2/93's engine and three cars and destroying three camp cars, resulting in damage of \$29,000.00.

As result of Chicago Division Board of Inquiry No. 3749 concerning this accident, Anderson was found "at fault for violation of Rule 104 and Motor Car Rules 9(a), 9(l), 17(b), 17(c), failing to personally see that switch points fitted properly, and switch was properly lined and secured, resulting in derailment."

The discipline administered to Anderson as result of Board of Inquiry No. 3749 of August 29, 1952, was:

"L. R. Anderson, Leading Signalman, Demotion to rank of Signalman with motor car operation certificate taken away."

(Emphasis supplied)

In June, 1953, as a matter of leniency Anderson's motor car operator certificate was restored and his seniority as Leading Signalman was restored.

It will be seen that the Carrier was extremely lenient in administering the discipline in Hinton Division Board of Inquiry No. 6826 as result of the motor car accident. It cannot be properly said that the Carrier acted capriciously, harshly or arbitrarily in handing down such discipline.

Carrier has shown claim should be denied because Claimant L. R. Anderson, having been properly debarred from operating motor cars, did not possess the necessary qualifications to hold position of Signalman advertised on Bulletin No. 10, dated March 26, 1956.

All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF BOARD: The chronology of events in this case may be summarized as follows:

July 6, 1955. Claimant L. R. Anderson, regularly assigned as Signal Maintainer with headquarters at Deepwater, West Virginia, was in an accident which involved the destruction of a Motor Car.

July 14, 1955. At an investigation of the accident, Anderson was charged with:

"... responsibility in connection with accident when motor car M-1440 in your charge was struck by extra 8000-8500-8001 East (No. 92) . . . about 2:27 PM, July 6, 1955 which resulted in motor car M-1440 being completely demolished."

The Board of Inquiry, after evaluating the evidence, concluded:

"Signal Maintainer Lacy R. Anderson is at fault for violation Rules 9(a) and 10 of Rules Covering the use of Motor Cars, Hand Cars, Push Cars, Trailer Cars and Velocipedes, effective Oct. 1, 1954."

Basing its decision, at least in part, on Anderson's service record which was introduced in evidence (and which included a prior demotion and withdrawal of motor operator's permit), the Board of Inquiry imposed the following discipline:

"Lacy R. Anderson, Signal Maintainer — Demoted from Signal Maintainer to Signaller and Motor Car Operator's Permit revoked."

Neither the Brotherhood nor Anderson appealed this decision under Rule 55(b) which provides in relevant part:

"An employee dissatisfied with the decision rendered shall have a fair and impartial hearing before the next higher officer, provided written request is made to such officer and a copy furnished to the officer whose decision is appealed, within ten days of the advice of the decision."

Thereafter Anderson worked as an Assistant Signaller (and, later as a Signal Helper) since there were no Signaller positions then available in his home district to which his seniority entitled him.

November 18, 1955. General Chairman M. P. Hughes wrote Superintendent K. R. Ketcham as follows:

"I would like to meet with you, at your convenience, in order to discuss the possibility of securing for Mr. L. M. Anderson the privilege of again operating Motor Car on the Hinton Division.

"You can readily realize that Mr. Anderson is greatly restricted from utilizing his seniority to its fullest extent by virtue of not being permitted to operate Motor Car. I am aware of the fact that Mr. Anderson was relieved of his privilege to operate Motor Car and/or maintain a maintenance territory, through violation of the safety rules, but I feel sure that given another chance there will never be another violation by him. . . ."

November 25, 1955. At a meeting with the General Chairman, Carrier representatives declined to grant the Brotherhood's request.

March 26, 1956. Carrier issued Bulletin No. 10, advertising for bids a Signalman position in J. E. Scott's Floating Force in the Hinton Division. The Bulletins' brief description of duties noted only: "Construct and repair signal facilities."

Anderson submitted a bid for this position. However, on April 6, 1956 the job was awarded to H. S. Gwinn, an employe with less seniority than Anderson.

April 18, 1956. General Chairman Hughes filed a claim on Anderson's behalf stating (1) The current Agreement does not contemplate a junior employe being awarded a position in any class where a senior qualified applicant has submitted a bid, (2) Anderson should be assigned the Signalman position and compensated the difference between Signal Helper's and Signalman's rate of pay for all time withheld from the higher position.

April 30, 1956. Division Engineer C. M. Kern denied the claim, stating that Anderson's bid was not considered since:

"a signalman must operate motor cars and his motor car card was removed from his possession under board of inquiry Hx-D-6826 dated July 22, 1955. With this information I do not see how Mr. Anderson could be awarded the position of signalman since he could not fulfill the duties required."

The Brotherhood's arguments may be summarized as follows:

1. Under Rule 43(b) (System Gangs), "Assignments to the positions will be in accordance with home district seniority . . ." Anderson should have received the assignment since he was the senior bidder for a system gang position.

2. Anderson was qualified for the open Signalman job; he had performed such work for ten years; he had not been demoted from **that** position (only from Signal Maintainer). A man demoted to Signalman, with no exceptions expressed or implied, retains full seniority and rights in that class and all classes below.

3. Anderson was already sufficiently punished for violating safety rules. The Carrier is discriminating against him since other men, who were guilty of similar infractions, were not punished so severely.

4. Carrier's refusal to consider Anderson for Signalman's work in 1956 constitutes discipline **in addition** to that imposed by the Board of Inquiry in July 1955. In effect, he is being demoted from Signalman and this action is improper unless the procedures set forth in Rule 55 are followed, including an investigation, written submission of charges, and hearing.

5. Operating a Motor Car, or holding an Operator's Permit, is not part of a Signalman's job. Assignment to such position cannot properly be withheld from men who do not or cannot operate Motor Cars. Moreover, Bulletin No. 10 did not specify any requirement nor did it indicate that the Signalman had to fulfill any qualifications other than those normally attached to this class. The Carrier must be bound by the wording of its Bulletin.

Additionally, the Carrier employs many Signalmen who neither operate Motor Cars nor have Permits. Anderson, therefore, has been singled out for disparate and unfair treatment.

6. The Carrier violated Rule 55 in imposing discipline in July 1955 since the charge against him did not include matters contained in his past service record and such matters were considered by the Board of Inquiry.

Before discussing these arguments, it is important to note that we are in no position to review the 1955 disciplinary action. Despite the Brotherhood's allegation of unfairness, it is clear that Rule 55 provides specific procedures for appealing Management's disciplinary decisions. Since no appeal was taken, nor was it then argued that revocation of Anderson's Operator's permit be limited to a given period, we must proceed on the basis that the 1955 discipline was proper.

The issue at hand, then, is whether Anderson should have been awarded the Signalman position bulletined in March 1956, some eight months after his demotion.

It is significant, in our judgment, that in 1955 Anderson was disciplined in two ways: (1) he was demoted from Signal Maintainer; (2) his Motor Car Operator's permit was revoked. The second action is neither meaningless nor unimportant. It constitutes a real form of punishment (as recognized by the Brotherhood's General Chairman in November 1955 when he reminded Management that "Anderson is greatly restricted from utilizing his seniority to its fullest extent . . ."). Certain contract rules, moreover, recognize the role of motor cars. Rule 27(e), for example, provides:

"Operating or riding on track motor cars, in automobiles or in automobile trucks shall be considered work and shall be paid for as work time."

Rule 64(d), in a different vein, requires that:

"Motor cars will be equipped with dependable head and tail lights, cushions, and with windshields and tops suitable to the needs and protection of the employees, such equipment to be furnished as promptly as can be done in keeping with conditions. . . ."

Was it necessary for the Signalman attached to J. E. Scott's Floating Force to have use of a motor car? The evidence indicates it was: (1) Two Signalmen positions are attached to the Floating Force; (2) Due to the nature of the territory (New River District), access to crucial points can be gained only by such car; (3) Work is often performed at points distant from camp cars; (4) Signalmen frequently must work at opposite points on the line.

If use of a motor car was essential, why did not the Carrier note that fact in Bulletin 10? The Brotherhood believes that Management's failure to specify this requirement shows (1) No such requirement actually existed, (2) Management composed it as an afterthought in order to justify its discriminatory treatment of Anderson. The Brotherhood also affirms that since it is not a common practice on the property to require that Signalmen be qualified to operate motor cars "it must be assumed that Signalmen are not required to operate" them.

We cannot agree with these contentions. The evidence shows that the Carrier has rarely, if ever, included in its Bulletins a specific reference to use of motor cars. The absence of such reference in Bulletin No. 10, therefore, is without significance. On the other hand, there appears ample foundation for Carrier's statement that operation of motor cars has been part of the qualifications for many employees working in roadway and track, bridge and building, water supply and other classes, as well as for signal employees. Were this not the case it is doubtful that a provision such as Rule 27(e) would have found its way into the Agreement.

Was Anderson discriminated against? In our opinion the record does not support such charge:

1. The successful bidder was required to, and did, operate a motor car.
2. There is no evidence that this requirement was inserted just to keep Anderson off the job.
3. While some Signalmen work in crews or at locations where operating a car is not essential, in the Hinton Division job it was, and Management had the right to reject the bid of a man who did not hold an operator's permit.
4. The fact that some other employee, demoted after an accident and whose permit was revoked, had his permit restored nine months later, has no bearing on Management's right to reject a job bidder who currently is without a permit. The revocation of these permits is a disciplinary matter which should be handled under Rule 55; it does not properly belong in a seniority case like this.

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 Employee involved in this dispute are respectively Carrier and Employee 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 26th day of April 1962.