

Award No. 11879  
Docket No. SG-11419

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

William N. Christian, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**THE VIRGINIAN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Virginian Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the rules covering seniority and the filling of vacancies, when it failed to assign the senior available Signalman to a temporary vacancy in the Foreman class from October 6 to 15, 1958, inclusive.

(b) The Carrier should now be required to compensate T. W. Williams at the Foreman rate of pay for eight (8) hours each day for October 6, 7, 8, 9, 10, 13 and 14, 1958, and for four (4) hours for October 15, 1958.

[Carrier's File: M-1100-Misc.]

**EMPLOYEES' STATEMENT OF FACTS:** During October 1958, two signal gangs, under the supervision of Signal Foreman O. M. Chandler and J. D. Daniel, were located approximately six miles apart and were working on the same centralized traffic control installation. Beginning October 6, 1958, Foreman Chandler was absent due to illness and Mr. P. E. Perdue, the senior Signalman on Foreman Chandler's gang, was temporarily assigned to the Foreman position. Mr. T. W. Williams, a Signalman on Foreman Daniel's gang and senior to Mr. Perdue, submitted Forms 605 (Rev.-3-23-51), "Daily Work Report to Supt. Telegraph & Signals," on which he claimed an amount of time, at the Foreman rate, equal to that spent by Mr. Perdue on the Foreman position.

On October 23, 1958, Mr. N. S. Lewis, Supt. Telegraph & Signals, wrote the following letter of denial to Signalman Williams:

"I am returning, herewith, your time claims as follows:

8-Hrs. at \$533.06 for Oct-6-1958

8-Hrs. at \$533.06 for Oct-7-1958

Claimant Williams is contending that he was required to fill the place of a signalman when he was rightfully entitled to work as a foreman and under such contention he would have to make his claim for pay under Rule 702 for only the difference in rates of pay.

However, the claim that Williams should have been used as foreman during the short absence of Foreman Chandler has no basis in the rules. The employes may contend that Claimant Williams was entitled to the vacancy as foreman under terms of Rule 601. It will be noted, however, that Article 6 covers "promotions", "transfers", and "filling vacancies". Rule 601 refers to "promotions", provides that promotion shall depend upon ability and seniority, and defines the term "promotion". By that definition your Board will note that promotion is understood to mean advancing an employe from one seniority class to a higher seniority class in which he has not established seniority. Claimant Williams held no seniority in the foreman class. By reference to Rule 503(a) it will be seen that he could establish seniority in the foreman class only by acquiring a bulletined position as foreman. Since the vacancy of Foreman Chandler was not of sufficient length to require bulletin, Claimant Williams could not be "promoted" to the foreman position on the vacancy since he would not be advanced to the higher class. Thus Rule 601 refers solely to promotions and has no reference to filling vacancies.

The rules covering filling of vacancies are Rules 605, 606 and 607. It will be noted from Rule 605 that a vacancy of more than six months, except when vacancy is due to physical disability of an employe, is bulletined as a permanent vacancy. A vacancy of more than thirty days and less than six months is bulletined as a temporary vacancy. Rule 607 (a) provides how the bulletined vacancy is awarded. For vacancies under thirty days there is no rule specifying any particular employe is entitled to the job. It has been the practice to fill such vacancies of foreman by using the oldest qualified signalman on the gang as was done in the present case. Your Board's attention is called particularly to Rule 607 (c). This rule provides that the carrier need not, for a period of thirty days, assign even the employe who is entitled to the position by application on a bulletin. After the thirty-day period the assignee is entitled to not less than the earnings of the position.

There is, of course, a reason for this thirty-day provision. It was recognized that in carrying out work properly there cannot be instantaneous changes in positions by employes. There must be time to get employes rearranged in a manner which will minimize any loss of time by the employe and any interruption of the work and it was agreed that a maximum of thirty days should be allowed. Thus for a period of thirty days the Carrier has the right to fill any position to the best advantage of the service and no employe, during this period, has any claim that he, rather than some other employe, is entitled to the work. Thus clearly under the rules the claim of Signalman Williams in this case should be denied.

All information in connection with this case has been made available to representatives of employes.

**OPINION OF BOARD:** The issue is whether Carrier was obligated to assign the senior available Signalman to fill an eight-day vacancy in the Foreman class. There is no question as to Claimant's ability or availability. In furtherance of maintaining consistency in the awards of this Division, and so as to avoid conflict and confusion in them, we deem a sustaining award proper. A sustaining award herein as consistent with Awards 2381, 2490, 2716, 4200, 4393, 5721 and 5921; it is contrary to Awards 1124, 1150 and 1177 which

were rejected by this Board in Award 2490; it is distinguished from Awards 10298 and 11030 where the Claimants were geographically unavailable.

The claim should be limited to the difference in the rate as between foreman's rate (to which Claimant was entitled) and signalman's rate (which Claimant has already been paid). Rule 702.

**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 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 violated.

#### AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.