

Award No. 11892
Docket No. SG-11356

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, especially Rules 15, 33 and 34, when it allowed Signalman G. O. Wilkerson to be displaced on May 5, 1958, without proper advance notice, and then did not allow him to work on May 6, 1958, when he returned to his former position. The Carrier also violated Rule 22 when it refused to allow Mr. Wilkerson travel and waiting time from 5:00 P.M. May 5, 1958, until 6:00 A.M. May 6, 1958.

(b) The Carrier should now be required to compensate Mr. Wilkerson for six hours and fifteen minutes at the Signalman rate of pay for May 5, 1958, eight hours at the Signal Helper rate of pay for May 6, 1958, and travel and waiting time at the Signal Helper rate of pay from 5:00 P.M. May 5, 1958, until 6:00 A.M. May 6, 1958, because of the above violations.

[Carrier's File: G-364-18, G-364, G-374, G-304]

EMPLOYEES' STATEMENT OF FACTS: On May 5, 1958, Mr. G. O. Wilkerson had a permanent assignment of Signal Helper on Evansville Division Signal Gang No. 17, and Mr. J. W. Cates was Foreman of the gang. Prior to that date, Mr. Wilkerson had been assigned to a temporary Signalman position in a System Signal Construction Gang under the jurisdiction of Signal Foreman J. J. Hacker.

At that time, the assignment in the Construction Gang was nine hours and fifteen minutes per day on May 5, 6, 7, 8, 9, 10, 12 and 13, and six hours on May 14, which made a total of eighty (80) hours. The assignment in the Division Gang was eight hours per day, Mondays through Fridays.

Soon after he began working on the morning of May 5, 1958, on his temporary signalman position in the System Gang, Mr. Wilkerson was

"An employe assigned to temporary service will, when released, return to the position from which taken unless at that time he finds it abolished or occupied by a senior who received it in the exercise of displacement rights, in which event the employe returning from temporary service will exercise such rights as provided in Rule 33. When such an employe has meanwhile become the successful applicant on a bulletined permanent position, he will not be required, at the expiration of the temporary assignment, to return to his former permanent position."

This rule had nothing to do with claimant being displaced off of Foreman Hacker's gang by C. H. Woodard, but was involved in claimant returning to his former permanent position when displaced off of the temporary vacancy he had bid in on Foreman Hacker's gang.

The employes also contend in their statement of claim:

"The Carrier also violated Rule 22 when it refused to allow Mr. Wilkerson travel and waiting time from 5:00 P.M. May 5, 1958, until 6:00 A.M. May 6, 1958."

Rule 22 pertains to "Traveling and Waiting Time for More Than One Day," the first paragraph of which reads as follows:

"Hourly rated employes performing service which requires them to leave their home station and who do not return to home station the same day, will be compensated as follows:"

Claimant obviously was not entitled to any travel or waiting time as claimed, as he was not required to leave his home station as contemplated in the rule but instead he returned to his former position from Foreman Hacker's gang because of having been displaced by a senior employe in the exercise of seniority.

Rule 39, "Exercising Seniority Rights", provides, in part, as follows:

"Employes accepting positions in the exercise of their seniority rights shall do so without causing extra expense to the railroad. . . ."

Claimant's return to his former position on the Evansville Division after being displaced by C. H. Woodward was in connection with claimant exercising his seniority rights, in accordance with the provisions of Rule 34.

Carrier submits there is no contractual support for claimant's claim, for which reason same should be declined.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employes, either in conference or correspondence.

OPINION OF BOARD: In this case, Claimant contends that on the morning of May 5, 1958, he was displaced, "without proper advance notice," from the position of Signalman he was temporarily filling in

Foreman Hacker's system construction gang which was then engaged in signal construction work on Carrier's Eastern Kentucky Division, and that as a result he was caused to lose two days' work in returning to his regular position of signal helper in Gang 17, on the Evansville Division.

Rule 33 of the current Agreement reads:

"(a) Except as provided in this Rule 33, when force is reduced the senior man in a class on a seniority district will be retained. Force reductions will not be made nor will positions be abolished until the employees affected have been given five days' written notice, and the guarantee in Rule 15 will not apply after the expiration of such notice.

"(b) Except as provided in paragraph (i) of this rule, when force is reduced or positions are abolished, an employee will have the right to displace any employee with less seniority rights in any class in which he holds seniority rights. However, he need not exercise such displacement rights unless he so desires and when displacement rights are not exercised, he will assume the status of a furloughed employee as in Rule 38. If he assumes the status of a furloughed employee, he will so advise the Signal Supervisor and General Chairman in writing. He may return to service only by bidding on new positions or vacancies or by recall under paragraph (d).

* * * * *

"(e) Employees whose positions have been abolished, who have been laid off by reason of force reduction, or who have been displaced, must assert displacement rights, if they desire to do so or if they are required to do so by the provisions of the preceding paragraphs, within 15 days from date of abolishment, lay off, or displacement unless a leave of absence has been granted under the provisions of this agreement. The employee will at the same time name the date he will report for work.

"(f) Employees failing to report for duty within 15 days from date they assert displacement rights, except when prevented from doing so by personal sickness or injury or when granted a leave of absence under provisions of this agreement, will forfeit all seniority rights.

"(g) An employee will not be displaced until the individual asserting displacement rights actually starts work on his position.

* * * * *

The pertinent facts leading to Claimant's displacement are not in dispute. Signal Gang No. 6, Eastern Kentucky Division, was abolished at close of work on Friday, May 2, 1958, Carrier having afforded the required five days' written notice as provided in Rule 33(a). On Monday morning, May 5, Signelman M. E. Strong, one of the men from abolished Gang No. 6, reported to Foreman Hacker and displaced Assist-

ant Foreman Woodard in the system construction gang. Woodard in turn displaced Claimant. Claimant contends (1) that he was not afforded five days' advance notice, and (2) that he was not actually displaced until shortly after the 7:00 A. M. starting time of the construction gang.

Claimant's first contention is untenable. The five days' written notice in Section (a) runs only to the employees who are initially affected by the abolishment bulletin, not to junior employees who may be displaced by such affected employees in the exercise of their seniority rights as specified in separate sections of Rule 33. Except only that employees must exercise displacement rights within 15 days, the agreement does not provide that any advance notice be given by senior men to junior men whom they displace.

As to Claimant's second contention, that he was actually displaced after the regular starting time, the Organization points out that Carrier, on the following day, refused to let Claimant displace account not reporting until 10:00 A. M., four hours after the 6:00 A. M. starting time. In the handling of the claim on the property, the Local Chairman, on May 14, 1958, originally presented claim for two days' pay. But on June 14, he wrote the Carrier's Superintendent:

"You will please recall that in my presentation of this claim, a part of which was for 8 hours at straight time rate for May 5, 1958. From recently received information it now develops that Mr. G. O. Wilkerson worked 1 hour and 45 minutes on this date in System Signal Construction, from starting time, at which time he received his instructions to return to his former position on Evansville Division Signal Gang No. 17. Mr. G. O. Wilkerson received pay for the 1 hour and 45 minutes worked on May 5, 1958. Therefore, that part of the claim petitioning for 8 hours pay on May 5, 1958 is reduced to 8 hours less 1 hour and 45 minutes, that is, reduced to 6 hours and 15 minutes."

At no time during the handling on the property did Carrier refute the Local Chairman's statement. For the first time, in its reply submission, Carrier presented evidence that the draft, in the amount of \$4.21, represented a refund of excess tax deducted from Claimant's April, 1958, wages. Nor do we find that Foreman Hacker's letter of May 21, 1958, quoted in Carrier's ex parte submission, was presented or made known to the Organization in handling on the property.

Therefore, Claimant will be allowed pay for 6 hours and 15 minutes for May 5, 1958, and 8 hours for May 6, 1958. Under Rule 39, employees are not entitled to pay for time consumed in traveling to positions in the exercise of seniority rights.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim sustained only to extent set forth in Opinion.

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.