

Award No. 11960
Docket No. SG-11426

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

BIRMINGHAM TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Birmingham Terminal Company—Chattanooga Station Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 1, 3, 4 and 11, when it furloughed Signal Helper Frank G. Homan effective September 11, 1958, and permitted B. F. Robinson, who holds no seniority on this Carrier, to fill a position on the Birmingham Terminal after Mr. Homan had been furloughed.

(b) The Carrier should now compensate Frank G. Homan at the Signal Helper rate of pay, beginning September 11, 1958, for all time that B. F. Robinson was allowed to work while Mr. Homan was on furlough. [Carrier's File: SG-12778]

EMPLOYEES' STATEMENT OF FACTS: During July 1958, Mr. B. F. Robinson was granted leave of absence from his position of Signal Maintainer, Haleyville, Alabama, which is on the Southern Railway System, and was appointed to a temporary Leading Signalman position (later changed to Leading Signal Maintainer) on the Birmingham Terminal Company, effective July 15, 1958. Mr. Robinson did not establish seniority on the Birmingham Terminal Company, but continued to accumulate seniority on the Southern Railway System. The Brotherhood did not object when Mr. Robinson was appointed to the temporary position on this Carrier as all signal employees were working at that time.

The Carrier abolished the position of second trick Signal Maintainer effective with the close of tour of duty September 10, 1958. The displacements caused by the abolishment of that position resulted in Signal Helper Frank G. Homan being without an assignment and he was furloughed September 11, 1958. As Mr. Robinson held no seniority on this Carrier and the Carrier continued to employ him after Signal Helper Frank G. Homan was furloughed, Mr. James E. Channell, Assistant General Chairman, presented the following claim, dated September 24, 1958, to Mr. J. C. Caldwell, Superintendent:

the Brotherhood's Assistant General Chairman, to so handle the situation. Why Mr. Robinson did not complain when he was not assigned as leading signal maintainer under vacancy bulletin No. 147, dated October 9, 1958, and Mr. J. E. Channell, a man his junior was assigned, is not known. Bear in mind that Mr. Robinson established seniority as leading signal maintainer dating from July 15, 1958, while Mr. J. E. Channell did not establish seniority as leading signal maintainer or as leading signalman until assigned as signal foreman on October 13, 1958. Another inconsistency in the Brotherhood's position is the fact it argues that Mr. B. F. Robinson did not establish any seniority by reason of being assigned to a temporary position of leading signal maintainer by bulletin No. 136, dated July 14, 1958, yet concedes that Mr. J. E. Channell, the Assistant General Chairman, established seniority as signal foreman and as leading signal maintainer by being assigned to a temporary position of signal foreman, effective October 13, 1958, by assignment bulletin No. 146. Apparently, Assistant General Chairman Channell convinced Mr. Robinson that his interpretation of his agreement was proper.

Carrier insists that Mr. Robinson established seniority as leading signal maintainer and as leading signalman and in all lower classes dating from July 15, 1958, when assigned by bulletin No. 136, dated July 14, 1958, and that Mr. J. E. Channell established seniority as signal foreman and as leading signal maintainer-leading signalman dating from October 13, 1958, when assigned as signal foreman by bulletin No. 146, dated October 9, 1958 (in this connection, Mr. Channell had previously established seniority in the signalman-signal maintainers' class dating from July 16, 1943, in the assistant signalman-assistant signal maintainers' class dating from October 16, 1942, and in the signal helpers' class dating from September 21, 1942). However, if Mr. Robinson did not establish seniority by being assigned to the temporary position of leading signalman, effective July 15, 1958, by assignment bulletin No. 136, by the same reasoning Mr. Channell did not establish seniority as signal foreman or as leading signal maintainer-leading signalman when assigned to the temporary position of signal foreman by assignment bulletin No. 146, dated October 9, 1958. In other words, if Mr. Channell established seniority as signal foreman and as leading signal maintainer-leading signalman, then Mr. Robinson established seniority as leading signalman-leading signal maintainer, but if Mr. Robinson did not establish seniority, then Mr. Channell did not establish seniority in the higher classes, as contended by the Brotherhood. One of these men could not establish seniority under the rules without the other doing so.

Thus, the evidence is conclusive that the Terminal Company did not violate the effective Signalmen's Agreement, and that there is no basis for the claim and demand which the Brotherhood here attempts to assert. In these circumstances, a denial award is clearly in order.

All evidence here submitted in support of the Terminal Company's position is known to employe representatives.

The Terminal Company, not having seen the Brotherhood's submission, reserves the right after doing so to make reply thereto and present any other evidence necessary for the protection of its interests.

OPINION OF BOARD: Carrier filled a temporary position of Leading Signal Maintainer with one B. F. Robinson, a qualified man with seniority on another Carrier but no seniority on this Carrier. Such action was due to absence of applications from employes of this Carrier after bulletin.

Thereafter, Carrier abolished the position of second trick Signal Maintainer. Resulting displacements caused Claimant to be furloughed from his Signal Helper position.

Employees urge that upon abolishment of the second trick Signal Maintainer position, Carrier should have terminated Mr. Robinson's employment and filled that position by bulletin; that had Carrier done so, Claimant would not have been displaced as Signal Helper.

Mr. Robinson was a classified employe under Rule 2 (c) which provides in part:

"Rule 2 (c) Leading Signal Maintainer: A signal maintainer assigned to work with and supervise the work of one or more signal maintainers shall be classified as a leading signal maintainer; . . ." (Emphasis ours.)

Therefore, there is no violation of Rule 1 (Scope Rule) which provides in part:

"No employe, other than those classified herein shall be required or permitted to perform any of the work covered by the scope of this agreement, . . ." (Emphasis ours.)

When Employees failed to bid for the temporary position of Leading Signal Maintainer, they waived their seniority rights to that position (and that position only) for the duration of the temporary period of Mr. Robinson's employment (and only for such duration). Claimant's rights are junior to those who waived, and Claimant is barred by their waiver. Nothing in the Agreement required Carrier to re-bulletin the temporary position of Leading Signal Maintainer upon abolishment of the second trick Signal Maintainer 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 13th day of December 1963.