

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company that:

(a) Management violated Article 4, Section 20(b), of the current T. & S. Agreement when by Bulletin No. 297, dated June 4, 1958, it withdrew position D-7, headquarters Castle Tower.

(b) Position D-7 should have been awarded to the senior applicant, K. R. Husted, or assignment made as provided by Article 4, Section 20(d), of the agreement.

(c) The employe assigned to this position should be allowed the rate of the position for each and every day he worked from June 5, 1958, until the correction is made. [Carrier's File: Docket No. 84—Lake Region Case No. 256971]

EMPLOYEES' STATEMENT OF FACTS: Under date of May 16, 1958, the Carrier issued Bulletin No. 496 advertising two Maintainer positions for seniority choice. That bulletin has been reproduced and is attached hereto and identified as Brotherhood's Exhibit No. 1.

On June 4, 1958, the Carrier issued Bulletin No. 497, assigning E. C. Rogers to one of the positions advertised in Bulletin No. 496 and showing the other position as being withdrawn. Bulletin No. 497 has been reproduced and is attached hereto and identified as Brotherhood's Exhibit No. 2. Mr. K. R. Husted, who was working the position of Signaller at Akron, Ohio, was the senior applicant for position D-7, the position withdrawn by the Carrier. Because of the Carrier's failure to assign the senior applicant to position D-7, Mr. J. H. Briggs, Local Chairman, presented a claim, dated June 24, 1958, to Mr. G. C. Godshall, Supervisor C & S, as follows:

"Please be advised that we have the following claim.

(a) Claim that Management violated Article 4, Section 20(b) of

thus, he has no legitimate reason for complaint. Under the circumstances, the Claimant cannot properly contend that he sustained any monetary loss or is entitled to any compensation. In Award 7082, Referee Dudley E. Whiting, it was held:

"Claimant worked the assigned hours of this position performing work within the craft and class to which he belonged and was paid the highest rate applicable to either position. He was in no way injured and a claim on his behalf is therefore wholly lacking in merit." (Emphasis ours).

In view of all of the foregoing, the Carrier submits that the claim advanced by the Employees in this case should be denied for lack of merit.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the provisions of the applicable rules of the controlling Agreement and the Railway Labor Act, as amended, the Third Division, National Railroad Adjustment Board, should deny the claim in this case. The Carrier has shown that no valid basis exists for a finding by the Board that the Agreement was violated under the circumstances heretofore related, but on the contrary, facts have been established showing that the Agreement and Board interpretations have specifically recognized the propriety of Carrier's actions in this case. Therefore, your Honorable Board is requested to deny the Employees' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is the same in all material respects as in

Docket Number SG-11585, Award Number 12031. We adopt the opinion therein as determinative of the issues in this case.

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 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 19th day of December, 1963.