Award No. 12174
Docket No. SG-11606

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York, Chicago and St. Louis Railroad Company that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement, particularly Rule 56, when it changed the method of computing the rate of pay earned by Mr. M. E. Young, Leading Signalman assigned to Signal Gang No. 3, from the basis of a monthly salary to an hourly rate.

(b) The Carrier now be required to pay Mr. M. E. Young for the difference in the amount paid him at the hourly rate and the amount he should have received at the proper applicable monthly rate since February 10, 1958. [Carrier's File: 30-21-6]

EMPLOYES' STATEMENT OF FACTS: In the early part of 1951, this Carrier (New York, Chicago and St. Louis Railroad Company) acquired the Wheeling and Lake Erie Railroad, and as a result of this consolidation the Brotherhood of Railroad Signalmen of America in Case No. R-2330 before the National Mediation Board was certified on March 7, 1951, to represent signal employes on the Wheeling and Lake Erie District who had formerly been represented by the IBEW.

Affected by this change in representation were 12 Signal Maintainers from the Wheeling and Lake Erie District who were paid monthly rates which were in excess of the average earnings being paid Signalmen under the agreement between the Brotherhood of Railroad Signalmen of America and the New York, Chicago and St. Louis Railroad Company.

In view of the fact that the Brotherhood of Railroad Signalmen of America was certified to represent the 12 Signal Maintainers on the Wheeling and Lake Erie District, an agreement was negotiated on March 23, 1951, between the Brotherhood of Railroad Signalmen of America and the New York, Chicago and St. Louis Railroad Company which provided that the Wheeling and

such employes and the positions vacated (which shall be advertised) will be governed by all of the provisions of the then current agreement applying to employes and positions other than those identified below."

The above paragraph was inserted solely for the protection of the Carrier. It guarantees nothing in the way of the rate following the man or the maintenance of any position. Instead, it simply provides that when one of the positions identified therein is vacated by an employe, the position vacated will no longer be subject to the conditions of the special agreement, nor will the affected employe take such conditions with him to another position.

At a meeting on March 14, 1951, the then General Chairman of the Signalmen's Organization, E. H. John, expressed the matter very well by stating that in a reduction of force, employes who were being paid an incumbent rate would no longer be paid that rate and would take the standard rate, and also that the paragraph above quoted would be a safeguard against identified employes voluntarily moving from an identified job to another and claiming that the rate should follow the man to other positions.

The position of Signal Maintainer at Manhattan Jct. was abolished consistent with Rule 31 of the current Signalmen's agreement. No contention to the contrary has been advanced by the Organization. There is no position of Signal Maintainer at, nor is Manhattan Jct. the headquarters for any position. M. E. Young occupies another position having a higher hourly rate, is paid for all overtime on weekdays, rest days, and holidays, and is no longer subject to the conditions of a position having a protected rate because it no longer exists. All provisions of the current Signalmen's agreement are now applicable to claimant M. E. Young, and he is not subject to the incumbent rate of a nonexistent position.

The claim is entirely without merit, is inconsistent with the rules of the current Signalmen's agreement, and must be denied.

All that is contained herein is either known or available to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket raised a question as to whether the exercise of seniority to displace following abolishment is "the voluntary exercise of their seniority" within the meaning of the applicable agreement.

We hold that it is.

Following the acquisition of one Carrier by another a group of twelve employes, of which Claimant is one, changed representation from the IBEW to the BRS.

To bring their position more nearly into line with the present Carrier employes' practices while at the same time protecting their seniority and rate a special agreement was concluded with this Carrier which, insofar as is here material, provided:

"In the event the occupants of the below identified positions accept positions at points other than to which now assigned by bidding on and filling vacancies in the voluntary exercise of their seniority,

such employes and the positions vacated (which shall be advertised) will be governed by all of the provisions of the then current agreement applying to employes and positions other than those identified below."

Approximately seven years later, Claimant's position was abolished, and he was "forced" to exercise his seniority and displace "only because it was necessary for him to do so to protect his seniority during the time that the dispute was being progressed."

This position is reasonable, and were it not for the following uncontradicted statement attributed to the Organization signatory would have been persuasive:

> "At a meeting on March 14, 1951, the then General Chairman of the Signalmen's Organization, E. H. John, expressed the matter very well by stating that in a reduction of force, employes who were being paid an incumbent rate would no longer be paid that rate and would take the standard rate, and also that the paragraph above quoted would be a safeguard against identified employes voluntarily moving from an identified job to another and claiming that the rate should follow the man to other positions."

That interpretation fits the present facts and requires a decision adverse to that claimed.

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 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 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 7th day of February 1964.

LABOR MEMBER'S DISSENT TO AWARD NO. 12174, DOCKET NO. SG-11606

Award 12174 is in error and disregards both the unambiguous language of the rule it purports to interpret and the established principle of contract interpretation as expressed in Award 5785 that:

"* * * If a rule is clear then the history of the negotiations leading up to its adoption should not be considered in determining its meaning, for we are then limited to a consideration of the intention made manifest thereby, as we do not have authority to rewrite or amend the rules or provisions of the Agreement itself. See Awards 2467, 4181, 4506, 5133, and 5430 of this Division. Of course, if the rule or provision agreed to can be said to be ambiguous, the opposite would be true."

Award 12174 being in error, I dissent.

W. W. Altus