

Award No. 12358
Docket No. SG-11784

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

In behalf of the oldest Signalman-Signal Maintainer under Rule 5 who was not working in the Signalman's class, for the difference in pay between what he received as an Assistant Signalman and that of a Signalman-Signal Maintainer for all time the second trick position in the Silvis Classification Yard was blanked, from October 22, 1958, until it was relieved on November 24, 1958. In the event there was no Signalman working in the Assistant's classification, due to force reduction, then claim is filed for the oldest Assistant Signalman who would be promoted to fill this vacancy, pending bulletin. Also claim is filed for the oldest Helper, who I understand is H. A. Rigg, to fill the vacancy left by the Assistant Signalman who should have been promoted to fill the vacancy for the time that this second trick was blanked in the Silvis Classification Yard.

[Carrier's File: L-130-146]

EMPLOYES' STATEMENT OF FACTS: Prior to October 20, 1958, Mr. J. R. Sale held a regular assignment at Silvis Classification Yard, with assigned hours from 3 P.M. to 11 P.M., Wednesday through Sunday, rest days Monday and Tuesday. Because of illness the Carrier granted Mr. Sale a leave of absence effective October 20, 1958.

As the Carrier failed to fill the vacancy created by Mr. Sale's leave of absence until Monday, November 24, 1958 Mr. R. A. Watkins, General Chairman, presented the following claim to Mr. H. Jensen, Signal Engineer, on December 15, 1958:

"I have been advised that second trick at Silvis Classification Yard was vacant from October 22, 1958, to November 24, 1958, this being J. R. Sale's regular assignment, and worked from 3 P.M. to 11 P.M., Wednesday thru Sunday, with rest day, Monday and Tuesday.

ployes to return to a higher classification if they hold rights in that classification.

Our position that vacancies must be bulletined is supported by Third Division Docket CL-5114, Award No. 5114, Adolph E. Wenke, Referee, wherein the Board stated, "Rule * * * requires that the regularly established positions be worked * * * days per week, unless the exceptions to Rule * * * apply, and when any vacancy arises by reason of an employe assigned thereto being off it is the duty of the Carrier to see that the position is filled and worked." In the instant case the regularly assigned employe was off duty, but the Carrier failed to fill and work his position from October 22 until November 24, 1958, a period consisting of 25 work days.

Our position is supported by the provisions of the Signalmen's Agreement and previous decisions of this Board, and an award sustaining our position is justified.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Leading Signalman J. R. Sale, second trick, Silvis, Illinois was off his position Oct. 20, 1958 account illness, and during his absence it was not deemed necessary to fill his position. Claim for unnamed claimants on basis the latter's position should not have been blanked was declined by the Carrier. Mr. Sale returned to work Nov. 24, 1958.

An Agreement between the Carrier and the employes of the Carrier, represented by the Brotherhood of Railroad Signalmen of America, bearing an effective date of July 1, 1952, is on file with your Board and by this reference is made a part hereof.

POSITION OF CARRIER: The Carrier submits that the claim as presented by the organization does not contain the name or names of the employes involved and is so lacking in specificity it does not comply with Article V. 1(a) of the August 16, 1954 Agreement which provides "All claims or grievances must be presented in writing by or in behalf of the employe involved." Therefore, on this basis alone, claim should be denied. We refer your Board to Third Division Award No. 9250, Fourth Division Award 1214, and Award 40 of Special Adjustment Board 170, in support of above contention.

(Emphasis ours.)

Without relinquishing our position as above, however, we submit our further position.

The employes contend that the Carrier cannot blank positions even though the Carrier does not require work to be performed thereon.

There is no rule in the agreement providing that the Carrier must establish or maintain positions. It is only where the Carrier desires to have work performed on a position that it is necessary to fill it. In the instant case, no work was required or performed on Mr. Sale's position during his absence and, hence, no requirement that the position be filled.

We submit on the basis of the facts and evidence in this docket the Carrier did not violate the agreement and claim should be denied.

OPINION OF BOARD: Leading Signalman J. R. Sale, second trick, Silvis, Illinois, was off his position, on leave of absence account illness, from October 20, 1958 through November 24, 1958. During this period the position

stood unfilled. The contention of Petitioner is that Carrier violated the Agreement by failure to bulletin and assign the position to another employee during the said period.

In support of its contention, Petitioner relies upon:

"RULE 56

NEW POSITIONS AND VACANCIES — BULLETINING

New positions or vacancies will be bulletined not later than the first vacancy bulletin following the dates such new positions are created or vacancies occur. Except as otherwise hereinafter provided, temporary new positions or vacancies will be bulletined for the period of their expected duration."

"RULE 57

BULLETINS — ISSUING OF

Bulletins advertising new positions and vacancies will be issued on the fifth and twentieth days of each calendar month . . . Assignment bulletins will likewise be issued on the fifth and twentieth of each calendar month."

And it argues that Rule 40(a), (b) and (c), which is captioned "Displacing in Lower and Returning to Higher Classes" would be effective only at the whim of Carrier, should Carrier have the right not to fill a vacancy in an established position.

It is axiomatic that all prerogatives inherent in management, except to the extent circumscribed by law or contract, remain vested in a carrier. Absent either of such circumscriptions, the determination of its manpower requirements is within the sole judgment of Carrier. Here, we have only to consider whether Carrier's right to exercise its judgment, to fill or let stand vacant a position, is impaired by the Agreement.

Rules 56 and 57 of the Agreement, *supra*, establish procedures to which Carrier is required to adhere in bulletining new positions or vacancies. The sense of the Rules is that new positions or vacancies can be filled by Carrier only in compliance with the procedures agreed to therein. These Rules, neither literally or by implication, can be construed as imposing an obligation on the Carrier to fill a vacancy. To construe the Rules as prayed for by Petitioner, "we would have to read into [them] that which is not contained therein" — this would be beyond our power. Award No. 10888. Therefore, we will deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 26th day of March 1964.

**LABOR MEMBER'S DISSENT TO AWARD 12358
DOCKET SG-11784**

I have no quarrel with the proposition that Carrier has the right to do that which it has not bargained away the right to do. However, this Award is unrealistic in light of the facts of record.

The relevant portion of Rule 56 provides that:

"New positions or vacancies will be bulletined not later than the first vacancy bulletin following the dates such new positions are created or vacancies occur. Except as otherwise hereinafter provided, temporary new positions or vacancies will be bulletined for the period of their excepted duration." (Emphasis ours.)

The Award, as I understand it, holds that if the Carrier elects to bulletin and assign a new position or vacancy, it must follow the procedures set out in Rules 56 and 57, but decision as to whether the position or vacancy will be bulletined and assigned is entirely up to Carrier. With this reasoning I certainly do not agree; it is simply a further manifestation of the illogical reasoning that has come to permeate the Division's awards. Therefore, I dissent.

G. Orndorff

Labor Member.