

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

HUDSON & MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson and Manhattan Railroad Company:

On behalf of F. G. Hardy for a day's pay at the Leading Signal Repairman's rate for each day he was suspended from the position Tour AL-1, to which he was entitled under Rule No. 46, Article 5, commencing February 23, 1959, and continuing thereafter until such time as the violation is corrected.
[Claim No. 126.]

EMPLOYES' STATEMENT OF FACTS: As shown in the Statement of Claim, the claimant in this dispute is Mr. F. G. Hardy. Attached hereto and identified as Brotherhood's Exhibit No. 1 is Bulletin No. 473, which shows that Mr. Hardy was assigned to Signal Repairman Tour No. A-3 effective Monday, August 4, 1958.

On October 30, 1958, the Carrier advertised Leading Signal Repairman Tour No. AL-1 as temporary on Bulletin No. 515, which is attached hereto and identified as Brotherhood's Exhibit No. 2. This temporary position was awarded to Mr. Hardy on Bulletin No. 520 which is attached hereto and identified as Brotherhood's Exhibit No. 3. On November 10, 1958, the Carrier advertised Tour No. A-3 as temporary on Bulletin No. 522 which is attached hereto and identified as Brotherhood's Exhibit No. 4. On November 18, 1958, the Carrier issued Bulletin No. 524 abolishing the temporary vacancy on Tour No. A-3. Bulletin No. 524 is attached hereto and identified as Brotherhood's Exhibit No. 5.

At this point, Mr. Hardy still owned Tour No. A-3 as his permanent, or regular position, as he had been assigned to Tour No. AL-1 on a temporary basis and Bulletin No. 524 only abolished the temporary vacancy on Tour No. A-3.

Under date of February 5, 1959, the Carrier issued Bulletin No. 530, advertising Tour No. A-3 as permanent. Bulletin No. 530 is attached hereto and identified as Brotherhood's Exhibit No. 6. Actually, there was no occasion

"... When ... an employe is the successful applicant on a bulletined regular position he shall not be required to assume the duties of such position until the expiration of his temporary assignment."

This provision merely indicates that an employe may complete a temporary assignment before assuming a permanent one which has been awarded to him. However, it does not indicate that an employe who desires to accept the permanent assignment immediately, and relinquish the temporary assignment, is precluded from so doing. In other words, the rule does not command an employe to complete a temporary assignment when the employe does not care to do so.

Rule 46 is not applicable to a situation wherein an employe voluntarily assumes the duties of a regular position for which he has bid. Upon being awarded Tour A-3, the claimant did not, either in writing or verbally, express a desire to continue to work temporary Tour AL-1, but, on the contrary, verbally indicated to the Carrier's Superintendent of Signal System & Way that he did not desire to continue in the Leading Signal Repairman position. The claimant was not "required" to abandon the temporary position, and therefore, by its own terms, Rule 46 is without relevance. If the claimant had desired to work as a temporary Leading Signal Repairman until June 29, 1959 (the date the temporary position was terminated), he should have so indicated when he bid for and assumed the duties of Tour A-3.

The claimant has demanded pay at the Leading Signal Repairman rate for February 23, 1959, "and continuing thereafter until such time as the violation is corrected." However, it is submitted that the Carrier is subject to no agreement which permits claims of a continuing nature.

CONCLUSION

In view of the above, it is submitted that there is no basis for the claim. Carrier submits that the employe is not entitled to Leading Signal Repairman pay from February 23, 1959 until June 29, 1959 (the date the temporary position involved was abolished).

Further, there is no provision in any applicable agreement between the parties permitting the Organization to present claims of a continuing nature.

OPINION OF BOARD: Claimant was the regularly assigned Signal Repairman to position Tour No. A-3. On November 7, 1958, he was awarded a temporary position as a Leading Signal Repairman, Tour No. AL-1, effective November 10, 1958. On the latter date, Carrier advertised Signal Repairman position Tour A-3 as a temporary position and on November 18, 1958, withdrew that advertisement.

On February 5, 1959, Carrier advertised Signal Repairman position, Tour No. A-3, as a permanent position. Claimant submitted his bid and was, by bulletin dated February 13, 1959, awarded that position effective February 16, 1959.

On February 13, 1959, Carrier also advertised the position of Leading Signal Repairman Tour No. AL-1 as a temporary position. This position was awarded to a signal employe junior to Claimant. Subsequently, position Tour No. AL-1 was advertised as a permanent position and Carrier awarded it to the same junior employe.

Petitioner contends that Carrier violated Rule 46 because Claimant wanted to continue in the temporary position, Tour No. AL-1. This, continues the Petitioner, is evidenced (1) by Claimant's application dated February 17, 1959, for the temporary position as Leading Signal Repairman Tour AL-1 and (2) by the claim filed personally by Claimant.

Rule 46 of the Agreement reads:

"Rule 46

When an employe is the successful applicant and awarded a temporary position or temporary vacancy he shall, when released, have the option of displacing junior employes assigned to temporary positions or vacancies in the class from which released, or of returning to his last permanent position unless such position has been abolished or occupied by a senior employe exercising displacement rights, in which event Rule 33 will apply. When such an employe is the successful applicant on a bulletined regular position he shall not be required to assume the duties of such position until the expiration of his temporary assignment."

The question to be determined is whether Claimant was required to assume his duties of the permanent position Tour No. A-3 and to relinquish his temporary position Tour No. AL-1.

Under Rule 46, Claimant, the successful applicant on the bulletined regular position A-3, could "not be required to assume the duties of the regular position until the expiration of his temporary assignment."

Webster's New International Dictionary, Second Edition, Unabridged defines "require" as "to demand; to claim by right of authority; to demand or exact as necessary or appropriate; to impose a command or compulsion upon (one) to do something." There is no probative evidence in the record that Carrier demanded, exacted, commanded or compelled Claimant to relinquish temporary position Tour A-1.

The record shows that on April 20, 1959, Carrier's Superintendent of Signal System and Way wrote to Claimant, in part, as follows:

"Rule 46, which you cite, is not applicable, since you voluntarily assumed the duties of the position to which you bid. You did not indicate your desire to continue to work Tour AL-1, either in writing or verbally; on the contrary, you indicated to me verbally that you did not desire to continue in the Leading Signal Repairman position."

Again, on July 13, 1959, Carrier's Superintendent of Signal System and Way wrote to Petitioner's General Chairman, in part, as follows:

"In this claim Mr. Hardy bid and was awarded job No. A-3. He was working a temporary job, No. AL-1. He verbally indicated his desire to work and reported for the A-3 position the following Monday after the award. He was not removed from AL-1 as your letters indicate but voluntarily left the temporary position."

Carrier's position as evidenced by these letters is nowhere categorically denied. Petitioner states only that "The record shows that Mr. Hardy was required to assume the duties of Tour No. A-3 effective February 16, 1959." Petitioner also states that:

"In this case, as clearly evidenced by the record, Mr. Hardy desired to retain Tour No. A-3 as his regular permanent assignment, but he also desired to remain on Tour No. AL-1 for the duration of the temporary vacancy."

These are mere assertions and not evidence. There is no affirmative, probative evidence to support Petitioner's position that Claimant was required to assume the duties of position Tour No. A-3.

Claimant was awarded the position of Signal Repairman Tour No. A-3 on February 13, 1959, effective February 16, 1959. On February 13, 1959, Carrier also bulletined temporary position Tour No. AL-1. Claimant applied for temporary position Tour No. AL-1 on February 17, 1959, a day after he had vacated temporary position Tour No. AL-1 and had actually worked on his permanent assignment Tour No. A-3. This is not evidence that Claimant desired to continue in the temporary position, Tour AL-1. On the contrary, it supports Carrier's position that Claimant voluntarily vacated temporary position Tour No. AL-1.

The mere fact that Claimant personally filed this claim is not evidence that he desired to continue in the temporary position, Tour No. AL-1 or that Carrier required Claimant to assume the duties of position, Tour No. A-3.

On the basis of the record, we are obliged to conclude that there is no merit to 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 Employee involved in this dispute are respectively Carrier and Employee 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 11th day of June 1964.