Award No. 12631
Docket No. SG-12009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Gulf, Colorado and Santa Fe Railway Company:

> In behalf of K. B. Elliott for payment of the difference between the amount of payment he receives as a Signal Maintainer and the monthly rate of pay of Signal Inspector, plus his actual living expenses while held away from his assigned headquarters of Signal Inspector at Temple, Texas, beginning with January 1, 1959, and continuing until Mr. Elliott is placed back on his assigned position of Signal Inspector at Temple, Texas. [Carrier's File: 132-125-1.]

EMPLOYES' STATEMENT OF FACTS: As shown in the Statement of Claim, the claimant in this dispute is Mr. K. B. Elliott. The basis for the claim is that Mr. Elliott was improperly replaced from his position of Signal Inspector at Temple, Texas, effective January 1, 1959, by former Assistant Signal Supervisor W. R. Clardy.

From October, 1945, until November, 1946, Mr. Elliott was in charge of a Signal Gang doing general repair work, so he established Class A seniority in accordance with Section 2 of Article III of the current Signalmen's Agreement. He was a Maintainer from November, 1946, until the end of December, 1951. In January, 1952, he was promoted to a position of Signal Inspector, and he remained on that position until January 1, 1959, the date on which the Carrier permitted Mr. Clardy to replace him.

In accordance with Section 6(a) of Article IV of the current Signalmen's Agreement, Mr. Elliott retained and accumulated all seniority rights while he was on the Signal Inspector position. When he was improperly removed from his Signal Inspector position at Temple, Texas, effective January 1, 1959, he exercised his seniority displacement rights by displacing the Signal Maintainer at Silsbee, Texas. According to the Carrier's time tables, Silsbee is 230.6 miles from Temple. Mr. Elliott did not desire to sell his home and move his family during the school term, so he subsequently returned to his home at Temple on the week-ends.

For example, the following is quoted from "Opinion of Board" of Third Division Award No. 4431:

> "The Organization contends that Ferguson should be paid his expenses while occupying the position of Section Foreman at Vinita from November 1, 1947 to November 20, 1947. This is on the ground that, but for his wrongful displacement at Savanna, he would have remained there and had no away-from-home expense. The only rule authorizing payment for meals and lodging is Article 11, Rule 3, Current Agreement. The case before us involves no such situation. In the absence of a rule authorizing the payment of expenses resulting from a wrongful displacement, we know of no way by which they can properly be allowed. The loss under the Agreement is the difference between the amount earned during the period and the rate of pay of the position he would have occupied if the Agreement had been correctly applied."

Third Division Award No. 6024, from which the following is quoted from "Opinion of Board", held that:

> "The instant claim is in the nature of a penalty for a violation of the Agreement for improperly discontinuing the four Crew Caller positions in question. We have some difficulty in concluding that any one of the rules set forth in paragraph (b) of the Claim specifically prescribes the appropriate penalty to be assessed and the record is devoid of facts showing what resulted after the Carrier's action so far as assignment of employes is concerned. It is certain the facts presented do not sustain the Claimant's contention additional expenses on account of whatever changes were made are payable under the provisions of Rule 4-GI(a) and (b). Even so the fact, as we have found, that such positions were discontinued and the work thereof assigned to employes in another separate and distinct seniority group in violation of the rules of the Agreement compels the assessment of a proper penalty. That in our opinion, under the confronting facts and circumstances, will be accomplished by requiring the Carrier to pay the four employes specifically named in the claim what they would have received if their positions had not been abolished for the period of time in question."

There is no rule in the Signalmen's Agreement which would authorize the payment of the claim for expenses incurred by Mr. K. B. Elliott by the reason of alleged wrongful displacement, etc.

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is entirely without support under any rule in the current Signalmen's Agreement and should be denied in its entirety for the reasons heretofore expressed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was appointed to the position of Signal Inspector on January 7, 1952, and remained in that position until January 1, 1959, when he was replaced by Mr. W. R. Clardy who had been an Assistant Signal Supervisor.

The record shows that Claimant established seniority under the Signalmen's Agreement on June 12, 1937, and Mr. Clardy had established his seniority as of August 29, 1927. Mr. Clardy lost his position as Assistant Signal Supervisor effective January 1, 1959, because the Gulf and Southern Divisions were consolidated. He had occupied the supervisory position since January 1, 1952.

The issue is whether Carrier has the right to demote Claimant from the position of Signal Inspector and to replace him with Mr. Clardy.

Section 2 of Article I of the Agreement excludes Signal Inspector positions from the seniority provisions of that agreement. Petitioner admits that Carrier has the right to promote employes to Signal Inspector positions, but it may not demote them without an investigation.

Petitioner argues that Mr. Clardy should have displaced an employe under the Signalmen's Agreement as provided in Section 4 of Article III of the Agreement. In its Ex Parte Submission Petitioner said:

> "Regardless of the reason for Mr. Clardy being removed from his Assistant Signal Supervisor position, the fact remains that he should have returned to a position covered by the Signalmen's Agreement in accordance with Section 6(b) of Article IV. As he had been on the Assistant Signal Supervisor position for more than twelve months, he should have been required to exercise displacement rights the same as in force reduction, in the class and on the seniority district from which promoted . . ."

Section 6(b) of Article IV reads:

> "(b) If within twelve (12) months following promotion or transfer to a position covered by paragraph (a) of this Section, such position is voluntarily relinquished, abolished, or the employe is demoted therefrom, he will be permitted to return to the position listed in Article I of this Agreement which he was holding prior to promotion or transfer, if such position is still in existence; if it is not in existence or has been acquired by a senior employe in the exercise of seniority displacing rights, or if more than twelve (12) months have passed since promotion or transfer, he will be permitted to exercise displacement rights as though cut off in force reduction in the manner provided in Sections 4 of Article III of this Agreement, in the class and on the seniority district from which promoted or transferred. . . ."

Mr. Clardy could not have been required to exercise displacement rights in the manner provided in Section 4 of Article III. He could do so if he chose. His rights under Section 6 (b) of Article IV are permissive and not mandatory. Section 4 of Article III would have become applicable only if Mr. Clardy had exercised his displacement rights permitted to him in Section 6 (b) of Article IV. The Carrier has no right to require him to exercise such rights.

Since the position of Signal Inspector is not filled by bulletining and since employes holding such a position have no seniority rights thereto, Carrier may demote an employe heretofore appointed to such a position. That this was the intent of the parties to the Agreement, is confirmed by past practice.

Petitioner admits that the previous incidents were presented on the property, but states only that these cases never came to the attention of the General Chairman. This alone is not a valid defense.

In view of the contract terms and the intent given to them, we 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 Emloyes 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 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.