

Award No. 12784
Docket No. SG-12115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

HUDSON AND MANHATTAN RAILROAD COMPANY

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

In behalf of Signal Repairman G. S. Cone No. 4028, with headquarters at 33 Street Interlocking 12:00 Midnight to 8:00 A. M., work week Monday through Friday, rest days Saturday and Sunday, for the difference in the rate of pay between a Leading Signal Tester and a Signal Repairman for Thursday, April 9, 1959, when a junior Signal Repairman, Mr. F. G. Hardy, was assigned to work the vacant Tester's position in preference to a senior Signal Repairman, Mr. G. S. Cone, who was willing and able to work and was not asked.

[Carrier's File: Time Claim No. 1307.]

EMPLOYEES' STATEMENT OF FACTS: Mr. G. S. Cone is regularly assigned to a position of Signal Repairman with assigned headquarters at 33 Street Interlocking. The assigned hours of Signal Repairman Cone's position are from 12:00 Midnight to 8:00 A. M., and the regular assigned work week is from Monday through Friday with rest days of Saturday and Sunday. On Thursday, April 9, 1959, Leading Signal Tester Frank Forman was absent from duty and the Carrier assigned Signal Repairman F. G. Hardy, who is junior to Signal Repairman G. S. Cone, to fill Leading Signal Tester Forman's position.

In view of the fact that a junior Signal Repairman was assigned to the higher-rated Leading Signal Tester position in preference to senior Signal Repairman Cone, who was qualified, willing and available to fill the position, General Chairman J. J. Reese filed the following claim in behalf of Signal Repairman Cone under date of April 21, 1959, with Mr. A. D. Moore, Superintendent Signal System and Way:

"Formal Claim is hereby submitted as follows:

Claim is filed by the General Committee Brotherhood of Railroad Signalmen, in behalf and favor of Signal Repairman G. S. Cone No. 4028, with Headquarters at 33 Street Interlocking 12:00 MN to 8:00 A. M., work week Monday through Friday, rest days Saturday

tions or vacancies occur, except that temporary vacancies which are caused by absent employees need not be bulletined until the expiration of thirty (30) days from the date such vacancies occur. New positions or vacancies which are expected to be of more than 10 days and less than 6 months' duration will be bulletined within the above stated time limits as temporary.

* * * * *

(e) A temporary new position is an additional position authorized for more than 30 days but less than 6 months.

RULE 47 (a)

New positions or vacancies will be advertised by notice for a period of five (5) days, during which time employees may file bids for same with the official whose name appears on the notice, and thereafter within three (3) days the senior qualified employee who had filed a bid will be announced by notice and appointed to said position or vacancy. Pending this selection and appointment, vacancies will be filled temporarily by assignments made by the Management. (Emphasis ours.)

A study of these provisions shows that in no event need a position be bulletined until 10 days after the vacancy occurs. Indeed, in the case of a temporary vacancy, the position need not be bulletined until 30 days after the vacancy occurs. The agreement explicitly provides that seniority principles come into play only after a position has been bulletined. Until then, work assignments are a prerogative of management. This is clearly spelled out in Rule 47(a) of the basic agreement. In view of these provisions, it is respectfully submitted that the Organization's claim is without merit, and should be denied.

CONCLUSION

Carrier submit that the employee' claim is without merit and should be denied.

OPINION OF BOARD: The essential facts in this dispute are not in issue. The incumbent of a regularly assigned position of Leading Signal Tester was absent from duty on April 9, 1959 which the Carrier filled by assigning a Signal Repairman with less seniority than the Claimant. Petitioner contends that Carrier should have used the Claimant because of his greater seniority and asserts that the Agreement between the parties was violated. Carrier contends that since the temporary vacancy did not have to be bulletined under Rules 45 and 47 the assignment was a prerogative of management and not a violation of any Rule of the Agreement.

In the first instance the Carrier argues that the Statement of Claim as submitted by the Petitioner fails to meet the provisions of Circular No. 1 Rules of Procedure of this Board under the caption "Statement of Claim" which provides:

"Under this caption the petitioner or petitioners must clearly state the particular question upon which an award is desired."

A careful examination of the Statement of Claim and the record of the proceedings on the property satisfies us that Petitioner clearly disclosed the specific nature of claim and therefore we shall deny the procedural motion to dismiss.

The pertinent provisions of the Agreement are as follows:

"RULE 31

Senior employees as determined by Rule 32, of this Article, except as limited by Rule 42, of this Article, and depending upon their qualifications and fitness shall have preference in the selection of positions."

"RULE 43 (a)

Promotions and transfers to positions of leading signal tester, leading signalman, signal instrument repairman and signal repairman shall be based on ability and seniority; ability being sufficient, seniority shall govern."

"RULE 45 (c)

A temporary vacancy is a position regularly assigned on bulletin from which the assigned employe is absent but to which he has not surrendered his assignment or bulletin right."

"RULE 47 (a)

New positions or vacancies will be advertised by notice for a period of five (5) days, during which time employees may file bids for same with the official whose name appears on the notice, and thereafter within three (3) days the senior qualified employe who had filled a bid will be announced by notice and appointed to said position or vacancy. Pending this selection and appointment, vacancies will be filled temporarily by assignments made by the Management."

Petitioner asserts seniority cannot be ignored merely because the agreement permits the position in question to be filled without bulletining and cites earlier Board Awards in support of this general premise. Petitioner also argues that at least two rules in the Agreement between the parties support their position, namely Rules 31 and 43 (a) which are herein before set forth.

Carrier's position is that the particular vacancy was of a temporary nature as defined in Rule 45 (c) and that since it was not expected to be vacant for more than ten days it was properly filled by management under Rule 47 (a).

We are impressed by the fact that nowhere in Rules 45 and 47 is there an implication that the seniority rules are qualified in any way. Rule 31 clearly states that senior employees, depending upon certain conditions not in issue here shall have preference in the selection of positions. Section 43 (a) establishes that promotions and transfers shall be based on ability and seniority, the latter controlling if ability is sufficient.

As we stated in Award 2490:

"We adhere to the proposition that a valuable right cannot be abrogated by implication in one section of an agreement when such right was expressly and plainly granted in another section. It will be assumed that the contracting parties intended that some effect be given to both sections and that limitations of one upon the other would not be made except when it appears clearly that they were so intended. We conclude, therefore, that the Carrier must give effect to seniority rights in filling the positions here in question even though they were not required to be bulletined.

Therefore, we find that the Carrier should have applied the requirements contained in Rule 31 and that its failure to do so constitutes a violation of the Agreement.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.