

**Award No. 13797**

**Docket No. SG-13787**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**P. M. Williams, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company that:

(a) The Company violated and is continuing to violate Article 1, Section 1, Article 4, Sections 3 (c), 5 (a), 9 (a), 20 (d) and 20 (f) of the current agreement, when, on May 15, 1961, it awarded the position of Foreman on Bulletin No. 61-10 dated May 10, 1961, and advertised on Bulletin No. 61-9 dated April 28, 1961, to J. R. Hosfeld.

(b) R. H. Johns, a reduced employe from the Foreman's class and at present working in the Maintainer's class, be paid the difference between the Foreman's rate of pay and that of Maintainer from May 15, 1961, including all straight time, overtime, allowable time, and holiday pay earned by J. R. Hosfeld, because of the violations cited in claim (a) above, and until correction is made.

[Docket No. 308 - Philadelphia Region (Hbg. Dist. Case 16589)]

**EMPLOYES' STATEMENT OF FACTS:** The Claimant in this dispute, Mr. R. H. Johns, has a Foreman seniority date of May 24, 1926. At the time this dispute arose, he was working as a Maintainer as a result of having been reduced from a position in the Foreman class.

On Bulletin No. 61-9 dated April 28, 1961, Carrier advertised a Foreman position in Gang 011. On Bulletin No. 61-10 dated May 10, 1961, Carrier awarded that position to J. R. Hosfeld, who held an Assistant Foreman seniority date of April 1, 1959, but no Foreman seniority. The Brotherhood contends that Mr. Johns should have been assigned to the Foreman position instead of Mr. Hosfeld, and the claim on behalf of Mr. Johns is for the difference between the Foreman's rate and that of Maintainer from May 15, 1961, until correction is made.

As will be shown by documents reproduced herein, the Carrier denied this claim on the basis Mr. Johns' experience had been in communications work, whereas the Foreman position in question was allegedly for signal

issue. However, Carrier wishes to point out that, effective April 2, 1962, Claimant did obtain a position of Foreman, T&S. Therefore, even if it were decided, contrary to all of the foregoing, that the Rules Agreement was somehow violated, Claimant would under no circumstances be entitled to any additional compensation for any date subsequent to April 1, 1962.

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, first, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

**CONCLUSION**

The Carrier has shown that there was no violation of the Rules Agreement in this dispute and that the Employees have failed to present any proof whatever to the contrary.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On May 15, 1961, the Carrier used a junior employe to fill a Foreman's position, refusing to appoint Claimant to the higher rated job despite the fact that Claimant had Foreman seniority dating to 1926. The junior employe used in the position had assistant Foreman seniority from 1959. Carrier states that Claimant was not qualified to perform the work of supervising general signal construction work and urge that we deny the claim.

There is convincing evidence presented to us that Claimant was qualified to do the work required of him; therefore, his claim for compensation for any difference between his earnings as a Maintainer and those of the person who occupied the Foreman position from May 15 to July 24, 1961, should be sustained. The latter date being the day he would have been displaced had Claimant been awarded the disputed position.

**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

Claims (1) and (2) sustained in accordance with above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1965.