

Award No. 13841
Docket No. SG-13784

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

Thomas C. Fagan should be returned to his former Signalman position at Arkadelphia, Arkansas, and be compensated at the established rate of that position, commencing March 1, 1962, and continuing until he is returned to that position. [Carrier's File: B 225-391]

EMPLOYEES' STATEMENT OF FACTS: The Claimant in this dispute, Mr. Thomas C. Fagan, had been regularly assigned to a permanent Signalman position with headquarters at Arkadelphia, Arkansas. This submission will contain copies of correspondence in which Mr. Fagan is referred to as signal maintainer. The Signalmen's Agreement in effect on this property does not contain the classification of signal maintainer. However, Mr. Fagan was assigned to a signal maintenance section when he was assigned to the Signalman position with headquarters at Arkadelphia. On most railroads an employee on such an assignment is classified as a signal maintainer.

Mr. Fagan has worked in the Carrier's Signal Department since March 4, 1935, and has lived and worked at Arkadelphia fifteen years or more.

Mr. Fagan was admitted to the Carrier's hospital at Little Rock, Arkansas, on August 19, 1961 because of a retinal detachment of the left eye, and surgery was performed. There was no history of trauma, according to a medical report. He was discharged from the hospital September 28, 1961, as not improved. He was readmitted to the hospital November 1, 1961 for the same condition, and surgery was again performed. He was discharged from the hospital as improved December 18, 1961, and it was recommended that he be given a field test.

On February 6, 1962, the field test was given at Arkadelphia in the usual manner under the direction of the Trainmaster, with the Signal Foreman and the Brotherhood's Local Chairman in attendance, and all

In their Statement of Claim, the Employees not only ask that Signalman Fagan be returned to his former signalman position, but that he "be compensated at the established rate of that position, commencing March 1, 1962, and continuing until he is returned to that position." We have seen that claimant cannot be returned to his former position because of his physical condition. No reason appears for selecting March 1 as the day the claim is to commence. The field test was not completed until March 23. Claimant insisted upon being permitted to return to his former position, and so wrote Division Engineer Strawhun on April 13, 1962. Claimant was informed that he could work in the signal gang on April 23, but chose to delay returning to work until August 6. Claimant's delay from April until August in reporting for work is not the responsibility of the Carrier. There is no basis for a claim that Signalman Fagan now be compensated at the established rate of his former position since claimant has been working as a signalman since August 6, and his failure to report for work after the completion of the field test was of his own volition.

The Carrier must maintain high standards of physical fitness to insure the safe and efficient operation of the railroad. The Carrier in the instant case did nothing more than was necessary to maintain that high standard. It follows that the claim must be denied in its entirety.

OPINION OF BOARD: Claimant held a position in the classification of Signalman. He was assigned to the signal maintenance section at Arkadelphia, Arkansas, for approximately 15 years and had been in the Signal Department since 1935. In the performance of the duties of the position he worked alone and operated a motor car over his assigned territory.

Claimant was admitted to a hospital on August 19, 1961, with a retinal detachment in his left eye and submitted to surgery and he was discharged on September 28, 1961, as "not improved." He was readmitted on November 1, 1961, again submitted to surgery and discharged on December 18, 1961 as "improved." At the time of the discharge, a field test on vision was recommended. He was given an incomplete test on February 6, 1962, and a complete test on March 23, 1962. The results of the test, which are not disputed, show impairment of vision in the left eye.

Under date of April 10, 1962, the Division Engineer wrote Claimant:

"This test developed that you could not see the regulation tests in all cases with your left eye, and in some cases you could only see a distance of 525 feet on indication of block signal.

I am agreeable to permitting you to continue in service with your seniority unimpaired with the following stipulations:

- (1) That you will be restricted to work of signalman in a signal gang only, with the understanding that you will not operate a motor car alone.

* * * * *

Claim was initiated that Claimant be returned to the position he held immediately prior to the time he underwent surgery. The Organization alleges that Carrier's failure and refusal to return Claimant to his former position was discriminatory.

On August 6, 1962, Claimant was returned to work, without prejudice to processing the Claim, and assigned to a signal gang. This position was hourly rated and paid about \$80 per month less than the former position, which was monthly rated.

In Award No. 8394 we held:

"The Carrier is charged with the responsibility of maintaining safe and efficient operation of its facilities. It has a heavy obligation to provide for the safety of its employees and of other persons entrusted to its care. In a matter such as the instant case, this Board should not set aside Management's judgment unless there is a showing of action that is arbitrary, capricious or evidentiary of bad faith. No such showing is made by the record before us. Thus, the claim must be denied."

We are of the opinion that that holding is equally applicable in the instant case. 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 the 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 21st day of September 1965.