Award No. 14222
Docket No. SG-14126

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(a) The Southern Pacific Company violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rule 70 and that part of Signal Department Bulletin which states that the Relief Signal Maintainer will lose no time in making relief or returning to the gang.

(b) Mr. R. Gogna be paid eight (8) hours at the rate of $2.69 per hour for January 27, 1962 — and eight (8) hours at the rate of $2.69 per hour for January 28, 1962. [Carrier's File: SIG 61-34.]

EMPLOYES' STATEMENT OF FACTS: Claimant Gogna's regular job is No. 22, Relief Signal Maintainer, headquarters West Oakland. The rest days of that position are Saturday and Sunday. The Signal Department Notice that advertised that position is attached hereto as Brotherhood's Exhibit No. 1, and the Notice that awarded it to Mr. Gogna is Brotherhood's Exhibit No. 2. As shown by Brotherhood's Exhibit No. 1, the incumbent of that position will relieve Signal Maintainers in the Oakland Terminal Territory, as well as work in the gang, and when relieving Maintainers will assume the schedule of the relieved.

Job 18 is another Relief Maintainer position with headquarters at West Oakland. The bulletined conditions of that job are shown on Brotherhood's Exhibit No. 3. As shown thereon, the rest days of that job are Wednesday and Thursday.

Mr. Gogna began to relieve job 18 on Tuesday, January 16, 1962. January 17th and 18th were rest days of that position. Mr. Gogna observed the 17th as one of those rest days, but he was required to work Job 22 on the 18th, and he received the overtime rate for that work. He worked Job 18 on the 19th, 20th, 21st, 22nd and 23rd, observed a Job 18 rest day on the 24th, then again worked Job 22 at the overtime rate on the 25th. He worked Job 18 on the 26th, then worked Job 22 on the 29th, 30th and 31st.

with the close of shift on Friday, January 26, 1962, the position held by Signalman R. E. Burns in Gang No. 7 was abolished by letter dated January 23, 1962 (Carrier's Exhibit B), and Burns, having received notice of such abolishment in accordance with Rule 42 of the current agreement, elected to displace claimant from vacancy on Job No. 18 effective January 27, 1962. Consequently, on Saturday, January 27, 1960, Burns was placed on Job No. 18 and claimant was released to return to his own assignment, Position No. 22.

3. By letter dated February 5, 1962 (Carrier's Exhibit C), Petitioner's Local Chairman submitted claim to Carrier's Division Superintendent based on the contention that claimant should have been allowed to work Job No. 18 on Saturday and Sunday, January 27 and 28, respectively, 1962. Carrier's Division Superintendent denied the claim by letter dated March 16, 1962 (Carrier's Exhibit D). By letter dated April 12, 1962 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and the latter denied the claim by his letter of June 8, 1962 (Carrier's Exhibit F).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant's regular position was No. 22, Relief Signal Maintainer, with rest days of Saturday and Sunday.

On Tuesday, January 16, 1962, Claimant was taken off position No. 22 and assigned to fill a vacancy on position No. 18, with rest days of Wednesday and Thursday, while it was being advertised.

Claimant observed the 17th as a rest day on position No. 18. On the following day, also a rest day on position No. 18, he was required to work Job 22 and received the overtime rate for that work. He did the same on January 25. At all other times up to and through January 26 he worked Job 18.

Effective with the close of shift on Friday, January 26, 1962, the position held by Signalman R. E. Burns was abolished, and Burns elected to displace Claimant from the vacancy on Job 18, effective January 27. Carrrier placed Burns on Job 18 and returned Claimant to his regular assignment on Job 22. January 27 and 28 were regular rest days on Job 22 and Claimant did not, therefore, work on those days. He claims that Carrier should not have permitted Burns, who was admittedly junior to Claimant, to displace him and that he should have been permitted to work Job 18 on January 27 and 28.

The Organization relies on the bulletin advertising Job 22 which, in addition to the usual information, stated,

> "Holder of position 'Relief Signal Maintainer' will relieve Signal Maintainers in the Oakland Terminal Territory as well as work in the gang and **when relieving maintainer will assume the schedule of the relieved without penalty payment or loss of time either in making the relief or returning to the gang.**" (Emphasis ours.)

The Organization argued that Burns, as the junior employe, could not displace Claimant. The facts, however, do not sustain the assertion that Burns displaced Claimant. Carrier merely returned Claimant to his regular job on January 27. Claimant had no objection if Burns assumed Job 18 on January 29. The complaint is, really, that Claimant was returned to Job 22 on a rest day, that he could only be returned when he actually returned to work on Job 22.

We find no authority to support the proposition that Carrier may not return an employe to his regular assignment on a rest day.

Claimant also relied on the promise in the bulletin of Job 22 that when relieving he would do so "without penalty or loss of time." Two questions are raised by this argument: 1. whether Claimant has any right under the bulletin against loss of time, and 2, if so, whether he lost time.

This Board has held, in many cases, that the statements contained in a bulletin are informational and have no contractual significance. We have carefully examined the awards cited and find that none of them dealt with a specific promise or assurance such as that contained herein. In this bulletin Carrier not only gave the usual information, the descriptive title, headquarters, rest days and rate of pay which identify but do not make any promises but it added specific assurances. It stated that the incumbent will assume the schedule of the relieved without penalty or loss of time. This was not mere description but was an assurance to induce employes to bid for the job. The use of the word "will" in this context was promissory. To hold it as descriptive would be embarrassing to the Carrier.

The promise in the bulletin cut both ways. The incumbent was not only assured that he will not lose time but warned that he will not receive penalty payment. Carrier points this out in its Answer to Employes' Submission (R. 64) and it states, "It is Carrier's position that in the handling accorded Claimant in this case he did not lose any time."

The cases upon which Carrier relied in panel discussion herein dealt with matters which were not expressly promises.

Award 1316 (Wolfe) had to do with a description of the job. It was held to be merely a general outline of the work to be done and not a definition of job duties.

In Award 7166 (Carter) the bulletin location was involved. It was held descriptive of the place but no assurance that it was so limited.

Award 11923 (Seff), like Award 1316, dealt with a description of the job and was based upon that award.

Award 12047 (Engelstein) held that the listing of a job duty did not confer an exclusive right on the incumbent.

Similarly, Award 14065 (Rohman) dealt with a job duty.

Award 13195 (Coburn), like Award 12047, dealt with the question of whether the bulletin conferred an exclusive right to a job duty. The award contains some very general language categorizing all job bulletins as "merely advertisement and not in the legal sense an offer, the timely acceptance of which constitutes a binding contract." Such a general statement, not necessary for the decision, certainly does not preclude Carrier from, in fact, making an offer in a bulletin which could ripen into a contractual obligation. In our case, we think Carrier did so. When Claimant accepted the position, Carrier was obliged, in shifting Claimant about, to safeguard him against loss of time.

With respect to the question as to whether Claimant, in fact, lost time, we think that a fair intendment of the promise was that incumbent by

assuming the schedule of other jobs, would not lose time compared with his regular schedule. The norm set in this comparison is that of Job 22, which starts its week on Monday, January 15. In that week Claimant worked six days and was paid time and one-half for working Job 22 on Thursday which was a rest day on the schedule of Job 18 which he was temporarily assuming. He lost no time that week.

In the following week, he worked only three regular days at straight-time and one rest day at time and a half. Thus, he lost two regular days in making the relief that week. This is readily apparent if his schedule that week is judged from that vantage point of Job 22. Beginning Monday of that week he had four scheduled rest days, Wednesday and Thursday on Job 18 and Saturday and Sunday on Job 22. We are forced to the conclusion that he lost time contrary to the promise contained in the bulletin.

The only complicating factor was the fact that he worked on one of the scheduled rest days and was paid time and a half. We think Carrier should be credited with this time. The fact that he was paid at time and a half because it was on a scheduled rest day does not negate the fact that he worked that day. As a relief, he was to expect to be shifted around. His guarantee was only against the loss of time in doing so. We must conclude, therefore, that, having worked four days that week, he lost only one day and he should be compensated for it.

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 Employes 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 violated the Agreement.

AWARD

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.

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