Award No. 15171
Docket No. SG-14459

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific Railroad Company — Fort Worth and Denver Railway Company (Burlington-Rock Island Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company, that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly a letter agreement dated May 22, 1956, when it abolished the position of Vacation Relief Signal Maintainer effective at the end of tour of duty, Friday, June 22, 1962.

(b) The Carrier be required to compensate Mr. J. L. Snapp for all time lost from June 23, 1962, until September 1, 1962, inclusive, account improper abolishment of this position, and similarly compensate him for all future years for an equal amount of time that Signal Maintainers on the Joint Texas Division are on vacation and not relieved by members covered by the Signalmen's Agreement. (Carrier's File: Jt SG-18)

EMPLOYES' STATEMENT OF FACTS: This dispute is based on our contention that the Carrier violated the May 22, 1956 Letter-Agreement when it abolished the position of Vacation Relief Signal Maintainer effective at the end of tour of duty Friday, June 22, 1962. We contend that said agreement is still in effect, where as Carrier maintains it applied to 1956 only, and this is the basic issue to be decided by the Board. A copy of that agreement is attached hereto as Brotherhood's Exhibit No. 1.

In accordance with said agreement, a temporary relief position was advertised in 1956 to cover the vacations scheduled for that year. The advertising bulletin is Brotherhood's Exhibit No. 2, and the assignment notice is Brotherhood's Exhibit No. 3. The 1956 Vacation Schedule is Brotherhood's Exhibit No. 4.

The May 22, 1956 Agreement was negotiated after a dispute arose when the Carrier attempted to assign the Relief Signal Maintainer to an outfit car and not allow him an expense account (except for lunches when away from headquarters). That agreement was applied each year after 1956, until the

Had the FW&D been in direction and control of the Joint Texas Division, and there were no qualified bidders from the Joint Texas Division, the assignment to the temporary vacancy would have been from FW&D bidders who are represented by the Brotherhood of Railroad Signalmen but by a different General Chairman.

On June 14, 1962, the claimant, Mr. J. L. Snapp, was properly notified in writing as follows:

> "Effective at end of tour of duty, Friday, June 22, 1962, the position of Vacation Relief Maintainer on the Joint Texas Division is abolished.
>
> Acknowledge receipt of this notice, in writing, to the Signal Engineer and the General Chairman."

The position of vacation relief maintainer was actually abolished as indicated. The claimant thereafter returned to his home railroad, reported for duty Monday, June 25, 1962, and has been regularly employed ever since.

OPINION OF BOARD: We are here concerned with a letter agreement between these parties dated May 22, 1956.

The letter agreement contains this paragraph:

> "It was understood that we would get together this fall and work out a vacation relief agreement so as to avoid any misunderstanding or delay in assigning signal maintainers' vacations in the future.
>
> Kindly indicate your concurrence in this vacation relief program by signing in the space provided below, returning one executed copy to me and forwarding one executed copy to Mr. A. E. Parnell, so as not to delay the bulletining of this temporary relief assignment."

The letter agreement was agreed to by Mr. R. A. Watkins, General Chairman.

The Organization is here claiming Carrier violated this letter agreement when it abolished the position of Vacation Relief Signal Maintainer at the end of tour of duty June 22, 1962.

It is argued in behalf of the Carrier that the letter agreement of 1956 was "intended to provide only a vacation relief setup for the year 1956, and the Carrier was free to refrain from creating such vacation relief positions if it so wished."

It is argued in behalf of the Organization that the parties had in 1956 arrived at a solution to the problem of relieving vacationing maintainers and that by conduct down through subsequent years the arrangement has ripened into an agreement that cannot be unilaterally terminated.

The letter itself was a resolution of the conflict between the parties for the 1956 vacation period. The Carrier did adhere to the arrangement each year until 1962.

We must agree that during this time, Section 6 of the Vacation Agreement was in force; in other words, it was available, had the Carrier chosen to exercise its rights thereunder.

Involved in this dispute is a vacation relief job established by the Carrier in the "letter agreement."

In Award 14397, we held:

> "A Carrier is not required to provide a vacation relief worker if a relief worker is not needed in the given instance, and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation."

There being no evidence of such a burden ensuing from Carrier's action, a denial award is required.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.

DISSENT TO AWARD 15171, DOCKET SG-14459

In speaking of the letter agreement adopted by the parties in 1956, the Majority says:

> "* * * The Carrier did adhere to the arrangement each year until 1962."

The facts are, as clearly set forth in the record, Carrier advertised and awarded a position of Vacation Relief Signal Maintainer in May 1962. Effec-

tive June 22, 1966, during the agreed-upon vacation season, Carrier unilaterally abolished the relief job. The record contained nothing in the way of evidence of disappearance of work as grounds for abolishing the relief position. In fact, two other cases handled concurrently with this one grew out of Carrier's use of regularly assigned monthly rated maintainers to perform work of vacationing maintainers following abolishment of the vacation relief position.

After dodging the facts the Majority hastened to rescue Carrier on the strength of what Carrier could have done under Section 6 of the Vacation Agreement. Since this dispute did not grow out of the application of Section 6 of the Vacation Agreement, it seems to me disposition of the case turns not on what Carrier could have done under said Section 6 but on what Carrier actually did in unilaterally terminating an arrangement agreed to in 1956 and consistently followed each year thereafter into 1962. Conduct of the parties is often just as expressive of intent as the written word.

Award 15171 reflects failure of the Majority to consider all relevant facts; therefore, I dissent.

G. Orndorff
Labor Member

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