



Award No. 15389
Docket No. SG-15004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION RAILROAD COMPANY

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

(a) The Carrier violated the current agreement, as amended, particularly Rules 2(c) and 13, when it removed Signalman John L. House from his regularly assigned position at J Tower (8:00 A. M.-4:00 P. M.) and placed him on MO-2 position at Bessemer Engine-house (4:00 P. M.-12:00 M. N.) entirely at its discretion, without his agreement, on July 11, 1963.

(b) John L. House be paid one day's pay for every day which he would have worked his assigned position at J Tower until that job was abolished, effective July 11, 1963, on Bulletin 76 dated July 17 and posted July 18, 1963. This amounts to five (5) days at that position's rate of \$2.654 per hour.

EMPLOYEES' STATEMENT OF FACTS: This dispute resulted when Carrier required Mr. J. L. House, Jr., to suspend work on his regular assignment in order to work an altogether different one beginning July 11, 1963. The assigned hours, work days, relief days, rates of pay, and duties of the two assignments were dissimilar.

Before July 11, Mr. House worked his assignment as Signalman, Gang "J" Tower, Monday to Friday, \$2.6540 per hour, 8:00 A. M. to 4:00 P. M., with Saturday and Sunday relief days. His position had been advertised on Bulletin No. 76 (Brotherhood's Exhibit No. 1) dated February 28, 1963. He bid for it, and it was properly awarded to him on a bulletin dated March 11, 1963 (Brotherhood's Exhibit No. 2), effective March 12, 1963.

On July 1, 1963, the position of Signalman, MO-2 ("MO" Tower second turn), Thursday to Monday, \$2.7352 per hour, 4:00 P. M. to 12:00 Midnight, with Tuesday and Wednesday relief days, was advertised on Bulletin No. 79 (Brotherhood's Exhibit No. 3).

No bids were received for the position at "MO" Tower; nonetheless, Carrier issued a bulletin (Brotherhood's Exhibit No. 4) dated July 8, 1963, showing the successful applicant to be Mr. J. L. House, Jr., and the effective date of the award was 8:00 A. M., July 11, 1963.

The above letter, dated September 26, 1963, dealt with the same incident as involved in the within claim. In other words, the employees were progressing two grievances concerning the same incident. This latter grievance for change of shift pay was not timely filed under the time limit on claims rule and was, therefore, barred. Regardless of the fact that this latter claim was barred, the Carrier offered, without precedent, to dispose of both grievances by allowing claimant four hours' pay for change of shift. The organization, however, declined the Carrier's offer, and stated that they would progress each grievance separately. Accordingly, the Carrier denied the claim for change of shift pay by letter dated November 26, 1963, reading as follows:

"We refer to your letter dated November 14, 1963, concerning grievance dated September 26, 1963, claiming four hours' pay for J. L. House for change of shift on July 11, 1963.

We cannot agree that this claim has merit and further it is our position that since it was not properly presented in accordance with the provisions of Rule 20 (Grievances), it is barred.

Your grievance is, therefore, respectfully declined."

Rule 2 (c) reads as follows:

"(c) An employee will not be required to suspend work during his regular working hours to absorb overtime."

Rule 13 reads as follows:

"ADVERTISING POSITIONS

(a) New positions and vacancies of thirty (30) calendar days or more duration will be advertised for a period of five (5) days in agreed-upon places and filled by the senior qualified employee who bids for the position. The successful applicant will be awarded the position within fifteen (15) days from date position is bulletined.

(b) Vacancies of less than thirty (30) days' duration will be considered temporary and may be filled by the Management without regard to these rules.

(c) Where it is apparent to the Management before the expiration of ten (10) days that an employee does not possess the necessary ability and fitness to permit him to qualify, he will be removed from the position prior to the expiration of the ten (10) day period. An employee failing to qualify within ten (10) days will within five (5) days return to his former position, unless it has been filled by a senior employee by bid or displacement, in which event he will exercise displacement rights under the provisions of Rule No. 8.

(d) An established position shall not be discontinued and a new one created under a different title covering relatively the same class or volume of work for the purpose of reducing the rate of pay or evading the application of the rules in this Agreement."

OPINION OF BOARD: On July 1, 1963 Signalman MO-2 position was advertised by Carrier on Bulletin 79. There were no bids for the position. On

July 8, 1963 Carrier awarded the position to Claimant effective as of July 11, 1963. On July 17, 1963 Carrier advertised by bulletin that Claimant's previous position was abolished effective July 11, 1963.

The Organization argues that Claimant was entitled to work his previous position until effectively abolished by advertisement and cites Rules 13 and 2(c) of the Agreement between the parties.

Rule 13 sets out the advertising and bid procedure for available positions. It contemplates competition among employes for available positions, but is silent regarding the filling of vacant positions where demand by bid is non-existent.

Rule 2(c) proscribes suspension of work to absorb overtime. Application of this rule in awards cited by the Organization is not persuasive, since the facts in each of those cases are clearly distinguishable, having involved in each instance a situation where the employe was suspended from his regular position. In the case now before us, the fact is undisputed that Claimant was permanently reassigned to the new position. There was no overtime involved in this situation.

The Organization cites no other provision of the Agreement upon which to base the alleged violation. We are of the opinion that there is none.

The Organization places emphasis on the fact that Claimant's original position was obtained by bid and unilaterally abolished by the Carrier. If there is impropriety in this, it has not been proved. In this instance, the fact that the bulletin announced the abolition after Claimant was reassigned is insignificant.

We have established in previous awards that the Carrier has discretion to assign work in accordance with the requirements of its business, except where expressly restricted by agreement. (See Award 13802.) Here, the Carrier exercised such discretion.

This dispute does not embrace a situation in which an employe, upon the discontinuance of his position, would have had an opportunity to exercise his seniority to displace a junior employe; consequently, we do not decide such issue.

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 28th day of February 1967.