Award Number 17364
Docket Number SG-16156

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 31 and 33, when, from March 1-9, 1965, furloughed Assistant Signalman R. L. Collins was not recalled to service—during which time an employe junior to him was permitted to work.

(b) Carrier be required to pay Mr. Collins at the Assistant Signalman rate for all time March 1-9, 1965, inclusive, that he was improperly held out of service while a junior employe worked.

(Carrier's File: G-364-5; G-364: G-286)

EMPLOYES' STATEMENT OF FACTS: This dispute resulted when from March 1 to and including March 9, 1965, Carrier failed and/or otherwise refused to recall Mr. R. L. Collins from furlough to fill an Assistant Signalman position under advertisement. Ultimately, the job was awarded to him. He was properly assigned beginning March 10, 1965; however, he lost seven (7) days' work before it was done.

On March 1, 1965, a junior furloughed employe was recalled and permitted to work the position until March 10. The junior man was then furloughed again.

Assistant Signalman Collins has seniority in the class beginning January 16, 1964; whereas, the employe who was recalled to service on March 1 has seniority as an Assistant Signalman starting October 1964.

Brotherhood's Exhibit No. 1 is Bulletin No. 1, dated February 26, 1965, on which the position in question was advertised for bids. Mr. Collins instituted his claim in a letter dated March 6, 1965, addressed to Supervisor Communications and Signals Mr. J. R. Hatfield. The claim letter is Brotherhood's Exhibit No. 2.

Subsequent correspondence directly related to the handling of the claim on the property has been reproduced and for identification purposes marked Brotherhood's Exhibit Nos. 3 through 11. It is attached hereto and made a part of this ex parte submission.

This dispute was handled in the usual and proper manner on the property by the Brotherhood, up to and including the highest officer of Carrier designated to handle such disputes, without a satisfactory settlement having been reached.

There is an agreement in effect between the parties to this dispute, bearing an effective date of February 16, 1949, as revised to October 1, 1950, as amended, which is by reference thereto made a part of the record in this dispute.

CARRIER'S STATEMENT OF FACTS: This dispute grows out of a claim that Mr. R. L. Collins, instead of Mr. C. F. Ray, should have been returned to service on March 1, 1965. Carrier does not agree for the following reasons:

(Exhibits not reproduced)

Article I, Section 1, of the Mediation Agreement of February 7, 1965, provides, in part, as follows:

> All employes, other than seasonal employes, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. Any such employes who are on furlough as of the date of this agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, provided that no back pay will be due to such employes by reason of this agreement.

The seniority of Messrs. Ray and Collins is as follows:

	Class 4 (Signalmen-Maintainer)	Class 5 (Asst. Sig.-Maintainer)	Class 6 (Helper)
C. F. Ray		10-19-64	11-19-47
R. L. Collins	5-18-64	1-16-64	1-16-64

Collins held a position as signalman on October 1, 1964, but was displaced on December 13, 1964, and did not have sufficient seniority to hold another position. Since he did not have two years' seniority, he was not covered by the agreement of February 7, 1965, therefore, was not recalled on March 1, 1965.

Ray is covered by the provisions of the February 7 Agreement, and he was, therefore, recalled as of March 1, 1965, as an assistant signalman (class 5). The position which was "created" for Mr. Ray, only because he is a "protected" employe, was then advertised. Mr. Collins bid on the position Mr. Ray was placed on, and he was awarded the position on bid because he was senior to Ray in the assistant's class.

OPINION OF BOARD: The Claimant, R. L. Collins had seniority standing as a Class 4, Signalman-Maintainer (5-18-64), as a Class 5, Assistant Signal-Maintainer (1-16-64), and as a Class 6, Helper (1-16-64).

Collins was on furlough, when, on February 26, 1965, Carrier bulletined an opening for Assistant Signalman (Class 5), bids to be received up to March 8, 1965.

On March 1, 1965, C. F. Ray, a junior furloughed employee (seniority date, 10-19-65 for this position), was permitted to work the position until March 10, 1965.

Claimant was assigned beginning March 10, 1965. It is his contention that he was denied seven days' work during the period March 1-9, 1965, in violation of Agreement rights and seeks restitution therefor.

In support of this claim, Employes cite Rules 31 and 33 which provide for layoff and recall rights according to relative length of service.

Carrier defends its actions in this matter on the basis of Ray's standing as a "protected employe" pursuant to the Mediation Agreement of February 7, 1965.

Article I, Section 1 of asid Agreement provides, in part:

> "All employes, other than seasonal employes, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. Any such employes who are on furlough as of the date of this agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, provided that no back pay will be due to such employes by reason of this agreement."

Carrier contends that Ray fulfilled the status of a "protected employe" as defined in the foregoing. He was in active service as of October 1, 1964, had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964 and was on furlough as of the date of the Agreement (February 7, 1965). Consequently, Carrier was under an obligation to return said employee to active service before March 1, 1965. He was, in fact, recalled on that date.

Carrier contends, in short, that the position in question was "created" for Ray to satisfy its obligations to return him to duty by the deadline date. Collins could not have been filling a vacancy, for no vacancy existed. However, after Ray's recall, bids were received pursuant to the earlier announcement of February 26th, and Collins was then awarded the job, since he was senior to Ray.

In the course of submission of statements by parties to this Board, Carrier in its Rebuttal to Employes' Submission informed us that it had submitted the dispute to the Disputes Committee on the grounds that, "since the dispute involves the interpretation or application of several of the terms of the agreement, it is a matter for adjudication of the Disputes Committee of said Agreement".

Accordingly, action was held up by us on the matter. We now have an Award (Award No. 50, Case No. SG-1-SE) from Special Board of Adjustment No. 605. Full text of said Award follows:

"AWARD NO. 50
Case No. SG-1-SE

SPECIAL BOARD OF ADJUSMENT NO. 605

PARTIES TO DISPUTE:

LOUISVILLE & NASHVILLE RAILROAD

and

BROTHERHOOD OF RAILROAD SIGNALMEN

QUESTION AT ISSUE: Was the action of the Carrier in using furloughed protected employee C. F. Ray on position of Assistant Signalmen-Maintainer during the period it was advertised, March 1-9, 1965, in preference to using senior furloughed unprotected employee R. L. Collins, in accordance with Article I, Section 1, Article II, Section 3, and Interpretations thereof?

OPINION OF BOARD: Under the particular facts and circumstances of this case it is clear that Carrier was required to return C. F. Ray to active service on March 1, 1965, inasmuch as he was a "protected" employee under the provisions of Article I, Section 1, of the Agreement of February 7, 1965.

The work performed by Ray from March 1, 1965 to March 9, 1965, was on position of Assistant Signalmen-Maintainer, during the period it was advertised by a bulletin dated February 26, 1965, until it was bid ineffective March 10, 1965, by R. L. Collins, an employee on furlough who was not a "protected" employee under the provisions of the February 7, 1965 Agreement. As Collins was not "protected" under the provisions of the February 7, 1965 Agreement, any rights he had to be used depended upon his seniority rights under the basic schedule agreement. In the Interpretation of November 24, 1965, Question and Answer No. 7 to Article I, Section 1, is as follows:

> **'Question No. 7:** What rights to employment or guarantee of compensation does an unprotected employe have?
>
> **'Answer to Question No. 7:** Except as provided in Article 3 Section 5, such an employe retains his seniority rights and is entitled to such employment as he can obtain pursuant to such rights. The only compensation guarantee he has is the agreed-upon rate for the work he performs in pursuance of his exercise of seniority.'

Under the circumstances of this case the question of Collins' seniority right to work, during the period the assignment in question was under bulletin, is not governed by the provisions of the February 7, 1965 Agreement, but involves interpretation of provisions of the basic schedule agreement which are not before us. We find that under the facts before us the action of the Carrier in using the protected employe on a position during the period it was under bulletin was in accordance with Article I, Section 1, Article II, Section 3, and Interpretations thereof.

The answer to the question is yes, in so far as the application of Article I, Section 1, Article II, Section 3 and Interpretation thereof to Ray is concerned.

The question as to Collins' right under the scheduled agreement is not before us.

CARRIER MEMBERS		EMPLOYEE MEMBERS	
(s)	W. S. Macgill	(s)	C. J. Chamberlain
(s)	J. W. Oram	(s)	G. E. Leighty

Washington, D. C.-April 22, 1969"

It will be seen from the foregoing that the Disputes Committee declined to rule on the rights of Collins, the more senior employe, confining itself to the rights of Ray as a protected employe. In regard to Ray, the Disputes Committee upholds the action of Carrier in assigning him to the position in question for the dates involved.

We find it difficult to understand Carrier's posture that from March 1st to 9th, a position was "created" for Ray to enable it to meet its obligations to him as a protected employe, but from March 10th onward, the same "created" position became a "vacancy" subject to bidding and filling according to seniority and awarded to Collins on the basis of his seniority.

It is undisputed that the position advertised by notice dated February 26, 1965 (inviting applications up to 12:00 noon, Monday, March 8, 1965) is the same position which was filled during March 1st to 9th by the assignment thereto of Ray, the protected employe, and then on March 10th when the stated period of applications had been ended, by the substitution of Collins, the senior employe, for Ray.

We find no showing in the record that the position in question was any the less a "vacancy" when it was so announced on February 26, 1965, or on March 1st, when it was first filled, than it was on March 10th. The rights which the Carrier concedes that the Claimant had to this vacancy on March 10th, he no less had on March 1st, after the announcement was out and bids were awaited. These rights are entirely and separately apart from Carrier's obligation to comply with the Mediation Agreement of February 7, 1965 and its having done so by placing protected employe Ray on a job within the time stipulated by said agreement. Article III, Section 5, of the Mediation Agreement makes that unequivocally clear.

We shall therefore sustain 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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1969.

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