



Award Number 17421

Docket Number SG-17158

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**ATLANTA AND WEST POINT RAIL ROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atlanta and West Point Rail Road Company—The Western Railway of Alabama that:

- (a) Mr. David Daniel be paid the Signalmen's rate of pay, in addition to his Maintainer's rate, for all days he is required to perform Signalman's work on the Belt Line. This claim is retroactive 60 days from April 9, 1966, and to continue until a correction is made or until the work on the Belt Line is completed.
- (b) Mr. David Daniel be paid his actual expenses for all days on which he is required to perform Signalman's work on the Belt Line. This claim is retroactive 60 days from April 9, 1966, and to continue until a correction is made or until the work on the Belt Line is completed.
- (c) Mr. W. J. Rooks, senior furloughed Signalman, be paid the Signalman's rate of pay for all work days and holidays, retroactive 60 days from April 9, 1966, and to continue until a correction is made or until the work on the Belt Line is completed.

EMPLOYEES' STATEMENT OF FACTS: Bulletin No. 129 of May 17, 1965 advertised a permanent Signal Maintainer position with home station Atlanta, Georgia, and assigned territory relay shop. Bulletin No. 129A of May 28, 1965 awarded that position to David Daniel. These two bulletins are attached hereto as Brotherhood's Exhibit Nos. 1 and 2.

At the time this dispute arose, Mr. Daniel was still on the position in the relay shop; Claimant Rooks was the senior furloughed Signalman.

Beginning on or about January 10, 1966, Carrier required Mr. Daniel to suspend work in the relay shop and perform work in connecting with retiring one track of double track on Belt Line, Atlanta, Georgia. Instead of reporting at the relay shop, he would report to another employee's tool house (headquarters of Section 1).

On April 9, 1966, the Brotherhood's Local Chairman filed the instant claim. The basis of his claim was that a Signalman position existed on the Belt Line, that Mr. Daniel was assigned to the relay shop, and that if

For the above reasons, your claims are herewith declined in their entirety.

Yours very truly,

/s/ T. P. KING

Director of Personnel

Necessary conference regarding this claim was held in Carrier's general office building on March 15, 1967, without a settlement being reached. Therefore, the matter is now before your Board for adjudication.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant is a permanent Signal Maintainer having as his assigned territory the relay shop at Atlanta, Georgia, his home station.

Shortly after Claimant assumed the duties of this position, Carrier began having him perform some signal work outside the relay shop on its belt line located in Atlanta.

The Organization contends that in doing so Carrier has violated the Agreement because it is having Claimant, a Signal Maintainer, perform the duties of a Signaller's position which position has not been bulletined in accordance with the applicable rules.

We do not agree, however, for these reasons:

First, we have repeatedly held that the classifications of work within an agreement are not exclusive grants of work to each classification. Thus, with a minor exception, the work reserved to the Signalmen by their Agreement can be performed by any employe in any classification in the Signal Department. Awards 10766 (Russell), 12501 (Wolf), 12668 (Dorsey), 14488 (Wolf). Consequently, Carrier could have Claimant perform the work on the belt line without violating the Agreement even though such work might be described as that of a Signaller.

Next, we have likewise repeatedly held that the Bulletin and Assignment Rules do not impose any obligation on Carrier to create new positions or to fill existing positions which are vacant. Such rules merely prescribe the procedure to be followed, when in the exercise of its managerial power, Carrier decides to create a new position or to fill an existing vacancy. Awards 12099 (Dorsey), 12100 (Dorsey), 12358 (Dorsey), 14252 (Rohman), 15979 (Engelstein), 16468 (McGovern), 16092 (Engelstein).

The claim is, therefore, denied.

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 respec-

tively 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.

Dissent to Award 17421, Docket SG-17158

It has been held from the beginning of the Board that its function is to interpret agreements as the parties have made them without authority to rewrite the rules for the benefit of either party. This is a quality that is lacking in the applicable awards relied on by the majority in this case. The present display of blind me-to'ism only compounds the error.

This Award commits two greivous errors. First, under the majority's ruling an employe using his accumulated seniority to buy a job that is available has absolutely no assurance that the information set out in the bulletin, as required by the rules, describes what is involved. Patently, the parties to the Agreement felt that information such as "Title of Position", "Home Station", "Assigned Territory". "Permanent or Temporary" are items of importance to an applicant otherwise they would not have provided for their inclusion in a bulletin. And, by the same token an applicant has a contractual right to depend on the information. When he bids on a job in the shop he has a perfect right to expect that that is where he is going to work; not in the field more than 50% of the time over a seven-month period as happened in this case.

Second, the majority's holding that "* * * Such rules [Bulletin and Assignment Rules] merely prescribe the procedure to be followed, when in the exercise of its managerial power, Carrier decides to create a new position or to fill an existing vacancy. * * *" is plain silly when viewed in light of the fact that the parties said in the Bulletin Rule (55) that "New positions or vacancies * * * shall be bulletined * * *" and later in the same rule said "* * * New positions or vacancies * * * will be bulletined * * *". As stated in my Dissent to Award 12358: "* * * With this reasoning I certainly do not agree; it is simply a further manifestation of the illogical reasoning that has come to permeate the Division's awards. * * *"

Award 17421 leaves much to be desired in the way of mature thinking; therefore, I dissent.

/s/ G. ORNDORFF

G. Orndorff
Labor Member

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S DISSENT TO

AWARD NO. 17421, DOCKET NO. SG-17158

The dissent consists in the main of a restatement of the arguments previously advanced by the Organization and the dissenter, all of which were considered and found lacking by the majority.

Award 17421 is consistent with well-reasoned prior Awards of this Division of the Board. Those prior well-reasoned Awards were not erroneous, and the views now expressed by the dissenter, regardless of how intemperate, do not make them erroneous.

Award 17421 is proper and the dissent does not detract therefrom.

/s/ P. C. CARTER
P. C. Carter

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor