



Award Number 17614

Docket Number SG-16994

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway (Chesapeake District):

On behalf of Signal Helper Theodore Perry, at his applicable rate of pay, for the comparable time that junior employees were used either on the Ashland Division or in the System Signal Construction Forces.

(Carrier's File: SG-214)

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because we content Carrier ignored and/or violated Claimant's rights under the seniority, bulletining and assignment rules of the Signalmen's Agreement when it worked a junior employee after the inception of the February 7, 1965 Mediation Agreement (Case A-7128) without bulletining the vacancy or position on which such junior employee worked.

The Claimant, Theodore Perry, has a Signal Helper seniority date of 4-2-45 on the Ashland Division. Other signal employees named in the record, and their Signal Helper seniority dates, are: Roy Hill, 4-5-45; H. Kissenger, 4-16-45. Carrier mentioned another junior employee (Messer) without showing his seniority date. The important seniority dates to keep in mind are Claimant's and Roy Hill's because after the inception of the Mediation Agreement, Carrier recalled Hill to the Ashland Division and placed him on a position without benefit of bulletin (which would have given Perry an opportunity to return to work).

Mr. Perry was furloughed on or about May 1, 1964, after having worked about eighty-nine (89) days in 1964. Mr. Hill had been furloughed on or about April 18, 1964. Both went on furlough status rather than exercise displacement rights onto another seniority territory (they were not required to work off their home seniority territory to retain their seniority rights while on furlough status).

Beginning on or about September 16, 1964, Hill went to another seniority district to work. He worked there until about April 9, 1965, at which time Carrier recalled him to his home seniority district because he was considered a "protected" employee under the terms of the February 7, 1965 Mediation Agreement. Claimant was not given an opportunity to work on his home seniority district when Hill was recalled thereto April 9,

OPINION OF BOARD: Claimant, a Signal Helper, was furloughed by Carrier on or about May 1, 1964. Signal Helper Roy Hill, who had been furloughed on or about April 18, 1964, was recalled by Carrier on April 9, 1965 over Claimant on account of being a protected employee under the February 7, 1965 Agreement. The position in question was not bulletined and therefore Claimant was not given the chance to bid on said position. The General Chairman made formal claim on Carrier on February 21, 1966 and notice to this Board was filed on January 25, 1967.

Carrier's main defense to this claim is that this dispute was submitted to the Disputes Committee under the February 7, 1965 Agreement and decided by Special Board of Adjustment No. 605 in Award No. 112, and therefore this claim should be dismissed.

The question at issue submitted by Carrier to the Disputes Committee is:

"Is Signal Helper Theodore Perry entitled to preservation of compensation and other benefits under the February 7, 1965 Agreement?"

The claim as presented to this Board for determination reads as follows:

"Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

"On behalf of Signal Helper Theodore Perry, at his applicable rate of pay, for the comparable time that junior employees were used either on the Ashland Division or in the System Signal Construction Forces."

We do not concur with Carrier's contention that the issue before the Disputes Committee and the issue before this Board are the same. Carrier asked the Disputes Committee to rule on the application of the February 7, 1965 Agreement and nothing else. The Organization on the other hand is asking this Board to determine if Carrier violated the applicable provisions of the Signalmen's Agreement, namely the seniority rules, and to render a money judgment if the verdict is positive. In addition, we find nothing in the February 7, 1965 Agreement in regard to having the Disputes Committee render damages in its findings. At least the question was not presented to the Disputes Committee in the first instance, only a request by Carrier that said Committee make a determination as to whether or not Claimant in this instance is entitled to preservation of compensation and other benefits under the **"FEBRUARY 7, 1965 AGREEMENT"** (emphasis ours). Therefore, finding that the claims are not identical, we must reject Carrier's contention in this regard.

In regard to the merits, we find that Carrier violated the Signalmen's Agreement when it failed to bulletin the vacant position in question as required by Rule 50, and used employees junior to Claimant to work said position. We do not agree with Carrier that there was not a bona fide vacancy due to the use of a protected employee to do the work of said position. However, as the claim is predicated upon the use by Carrier of Signal Helper Roy Hill and covers the same period as the claim in behalf of Signal Helper Rell Price (Award 17615) predicated upon the same action of the Carrier, and as Signal Helper Price is senior to the Claimant

herein, the Board finds no justification for the monetary claim in behalf of Claimant and it will be 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 respectively 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 violated.

A W A R D

Claim sustained as to violation of Rule 50.

Claim in behalf of Signal Helper Theodore Perry denied in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.