



Award Number 17615
Docket Number SG-16995

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 Rell Price, at his applicable rate of pay, for the comparable time that Carrier used employees junior to him, whether same employment was on the Ashland Division or in the Carrier's system forces. In addition, Carrier should make Signal Helper Price whole for accredited earnings toward retirement, hospital dues, and qualifying days toward vacation.

[Carrier's File: SG-212]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because Carrier ignored and/or violated Claimant's seniority rights by working a junior employe (Roy Hill) after the inception of Mediation Agreement dated February 7, 1965 (Case A-7128). Though Carrier's action obviously resulted from its misunderstanding and/or misapplication of the Mediation Agreement, the instant claim involves Claimant's right under the Signalmen's Agreement.

The Signal Helper seniority dates of Messrs. Price and Hill on the Ashland Division are 2-6-45 and 4-5-45, respectively.

Messrs. Hill and Price were furloughed on or about April 18, 1964. On or about April 6, 1965, Carrier recalled Mr. Hill from another territory to his home seniority district by sending him a personal letter and thereafter placing him on positions without benefit of bulletin. As a result, Mr. Hill worked while Mr. Price remained on furlough status.

Under date of February 21, 1966, the Brotherhood's General Chairman filed a claim on behalf of Mr. Price, asking that he be compensated for the time Carrier used junior employes, and that Carrier make him whole for accredited earnings toward retirement, hospital dues and qualifying days toward vacation. A copy of that claim is attached hereto as Brotherhood's Exhibit No. 1. Carrier's response is Brotherhood's Exhibit No. 2. Further exchange of correspondence between the General Chairman and the Carrier is Brotherhood's Exhibits Nos. 3 and 4.

loughed signal employees on the Russell Division, this work opportunity was made known to all furloughed Helpers on the Ashland Division, including Rell Price, the Claimant in this case. Roy Hill went to Russell and saw the Signal Supervisor about this work, and on September 16, 1964, Hill went to work on Russell Division. During the balance of 1964, Hill worked 69 days on the Russell Division. When it came time to consider whether Hill was a "protected" employee under the February 7, 1965, agreement, Carrier found that he had worked a total of 144 days during 1964, 75 days on the Ashland Division and 69 days on the Russell Division. Being uncertain as to whether Hill was or was not a "protected" employee, Carrier decided to tentatively consider him as protected, pending clarification, and he was placed at work on the Ashland Division April 12, 1965.

The other junior Helper specifically mentioned in the General Chairman's letter of February 21, 1965 (Carrier's Exhibit 1) was T. Perry. Perry holds seniority as Helper on the Ashland Division from April 2, 1945. Perry was furloughed on the Ashland Division on April 30, 1964, along with Price and Hill, after having worked 84 days during 1964. He performed no further service under the Signalmen's Agreement during 1964, except five (5) days as a vacation relief in August, 1964, which work, incidentally, was also available to Rell Price, the Claimant in this case. Perry was placed at work on the Ashland Division from July 26, 1965, through October 29, 1964, and on a System Force from November 1, 1965, through December 3, 1965, and from April 7, 1966, through May 6, 1966, in tentative manner and pending clarification.

The General Chairman's letter of February 21, 1966, originating the claim now before your Board, (Carrier's Exhibit 1) in addition to specifically mentioning Helpers Roy Hill and T. Perry, also refers, as a catch-all, to several Helpers junior to Price being worked on System Signal Forces. We understand this reference to include H. Kissinger and L. F. Bush and their record is included on statement referred to above—Carrier's Exhibit 4.

Having thus stated the facts in the instant claim, the Carrier will proceed to defining the issue of the instant claim and stating its position in connection therewith.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant is claiming herein that Carrier violated the Signalmen's Agreement when it used an employee junior to Claimant to fill the vacancy in question.

Carrier contends that the issue in question before this Board was decided by the Disputes Committee under the 1965 Agreement, and therefore the claim should be dismissed.

Examination of the Disputes Committee Special Board of Adjustment No. 605, Award No. 111, shows that the Committee decided the issue of Claimant's rights under the February 7, 1965 Agreement. It did not determine, as Carrier would have us believe, the rights of Claimant under the basic rules of the Collective Bargaining Agreement.

As was said in Award No. 111 of the Special Board of Adjustment No. 605, in quoting said Board's Award No. 91:

"Although the claim is that of an unprotected employee who asserts a violation of seniority rights, its origin is in Carrier's contention that the February 7 Agreement provided certain superior rights

for protected employees in connection with 'make-work'. It is this Committee's function to interpret the February 7 Agreement. The rules may become enmeshed in a case before us, and this has frequently occurred. But adjudication involving the February 7 Agreement and the November 24 Interpretations, and the relative rights of protected versus unprotected employees under them, properly comes before the Disputes Committee." (Emphasis ours.)

Thus it is seen that the Disputes Committee's function is to interpret the February 7, 1965 Agreement. But it did not decide the issue before this Board as to whether or not Carrier violated the Signalmen's Agreement. Thus, we are compelled to reject Carrier's contention in this regard.

Concerning the merits, it is undisputed that Claimant was senior to employe Roy Hill, used by Carrier to fill the vacancy in question. Further, we reject Carrier's contention that a bona fide vacancy did not occur on account of Carrier's "make-work" for protected employe Hill used on the position in question. Carrier should have bulletined the position as required by Rule 50 of the Agreement, and failing to do so violated said Agreement. We will 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.

A W A R D

Claim sustained.

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.