



Award Number 17616

Docket Number SG-16996

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: *Claims of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway (Chesapeake District):*

On behalf of Assistant Signal Maintainer L. M. Kelly for eight (8¢) cents per mile automobile allowance for sixty-eight (68) miles per day that junior employe E. H. Adkins was permitted to work the position of Assistant Signal Maintainer at Meadow Creek, West Virginia, until Carrier takes the necessary action to properly bulletin the position at Meadow Creek.

(Carrier's File: SG-215)

EMPLOYEES' STATEMENT OF FACTS: Claimant L. M. Kelly was the Assistant Signal Maintainer at Prince, West Virginia. His place of residence is near Meadow Creek, West Virginia. Working at Meadow Creek requires him to travel a distance of approximately sixty eight (68) miles per day.

On April 5, 1965, Carrier recalled a furloughed employe, E. H. Adkins, and placed him in Meadow Creek as Assistant Signal Maintainer. Carrier placed Mr. Adkins on that position without benefit of bulletin in accordance with Rule 50 of the Signalmen's Agreement, and worked him thereon until on or about February 25, 1966.

The instant claim, on behalf of Mr. Kelly for automobile mileage allowance of eight cents per mile for sixty eight miles per day, is based on our contention that the Carrier violated the current Signalmen's Agreement, as amended, particularly the bulletining, assignment and seniority rules, when it failed and/or refused to bulletin the Assistant Signal Maintainer position to which Mr. Adkins was recalled.

The claim was handled to a conclusion on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 4.

There is an agreement in effect between the parties to this dispute, bearing an effective date of August 16, 1946, reprinted May 16, 1958, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced)

This is a companion claim to claims of Rell Price and Theodore Perry on the Carrier's Ashland Division, which have also been docketed by the Employees with the Third Division, it being contended in all three of such cases that the Carrier is required to bulletin and award all work made for employees under the agreement of February 7, 1965.

No bulletin was issued in connection with putting Adkins to work at Meadow Creek, or in connection with sending him to augment the System Signal Gang. Adkins lived at Meadow Creek, and that was a place at which he could be used to do some productive work instead of letting him remain at home and pay him in lieu of work. It also gave Adkins work without having to move or find other living quarters while he could be used at Meadow Creek.

L. M. Kelly on October 1, 1964, held regular assignment as Assistant Signal Maintainer at Prince, West Virginia, which is only 10.4 miles by rail from Meadow Creek, but approximately 34 miles by highway. Kelly lives at Meadow Creek and travels daily between Meadow Creek and Prince to work his assignment. Kelly contends that if the work made for Adkins at Meadow Creek had been bulletined, he would have bid it in and been able to work out of the point of his residence, this prompting his claim for payment to him of automobile mileage because he was not permitted to work at Meadow Creek instead of Prince during the period April 5, 1965, until February 25, 1966.

Having thus stated the facts in this case, the Carrier will not proceed to outline its position and offer discussion thereon.

(Exhibits not reproduced)

OPINION OF BOARD: Petitioner is making claim for travel allowance at the rate of 8¢ per automobile mile for 68 miles each day that Carrier permits an employe junior in seniority to Petitioner herein to work the position of Assistant Signal Maintainer at Meadow Creek, West Virginia.

Petitioner claims that Carrier recalled to service from furloughed status Assistant Signal Maintainer E. H. Adkins and placed him at Meadow Creek, West Virginia, without bulletining the position as required by Rule 50 of the Agreement and Article I, Section 1 of the February 7, 1965 Agreement (Job Stabilization); that if the position had been bulletined, Petitioner would have acquired said position because of his seniority, and inasmuch as said position at Meadow Brook, West Virginia, is in the immediate vicinity of Petitioner's residence, he is required to travel approximately 68 miles per day to work his position at Prince, West Virginia.

Carrier contends that the position in question was not vacant due to Carrier filling said position with Employee Adkins in conformity with the requirements of the February 7, 1965 Agreement; that neither the February 7, 1965 Agreement or the rules of the Collective Bargaining Agreement support Petitioner's claim for automobile mileage because he was not permitted to work at Meadow Creek, West Virginia; that Carrier has no way of knowing if Petitioner would have been the successful applicant for said position if it had been bulletined, and thus a decision of this Board cannot be based on speculation or assumptions; that Petitioner seeks a "penalty" which is not provided for in the February 7, 1965 Agreement or the general rules of the Agreement.

Although Carrier violated the Agreement when it failed to bulletin the position in question as required by Rule 50 (a) so as to afford Claimant the opportunity to bid on said position, nevertheless we do not find any rule in the Agreement sanctioning such a claim for mileage allowance as involved herein. Nor do we find that Claimant sustained his burden of proving a "pecuniary" loss from the violation by Carrier of said Rule 50 (a), and we are compelled to deny 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 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 to the extent indicated in the Opinion.

A W A R D

Claim sustained as to violation of Rule 50.

Claim in behalf of Assistant Signal Maintainer Kelly for automobile allowance is denied.

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.