



Award Number 17617

Docket Number SG-17194

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 Company (Chesapeake District) that:

- (a) Carrier violated the current Signalmen's Agreement, in particular Rules 50, 51, 52 and all Seniority Rules, when beginning August 16, 1965 and extending to May 10, 1966, it recalled to service employees junior to Signal Helper Carl M. Cooke and kept these junior employees in service through the period referred to herein. Signal Helper Cooke was furloughed on May 1, 1964 and was in furloughed status during the period August 16, 1965 through May 10, 1966, and would have responded for service had position been offered him. Carrier refused to bulletin any of these positions worked by the junior employees—thereby not giving Signal Helper Cooke an opportunity to exercise his seniority to positions to which he was entitled by his greater seniority.
- (b) Carrier be required to compensate Signal Helper Carl M. Cooke at his applicable rate of pay for the period of time that the Carrier used junior employees as defined in part (a) of this claim. [Carrier's File: SG-236]

EMPLOYEES' STATEMENT OF FACTS: This claim is the result of Carrier's unilateral action and its refusal to properly apply the rules of the Schedule Agreement which relate to seniority and the advertisement, awarding, and assignment of positions covered by this Agreement.

During the period beginning August 16, 1965, and extending to May 10, 1966, Carrier retained in compensated service three (3) employees who had less seniority than Signal Helper Carl M. Cooke. The respective employees and their relative seniority dates are as follows:

<u>Employee</u>	<u>Signal Helper</u>	<u>Assistant Signalman</u>	<u>Signalman</u>
Carle M. Cooke	11-14-45	_____	_____
Frank Hardy	8-11-47	_____	_____
Garrett L. Howard	8-18-47	_____	_____
Kenneth R. Crowder	10-08-51	_____	_____

A temporary signal construction force was needed on the Cincinnati Division in August, 1965, and positions therefor were advertised or bulletined. One Signal Helper was needed for that force, and such Signal Helper position was bulletined for bids. That Signal Helper position was bid for and awarded to Gerald Moore, a senior Signal Helper on the Cincinnati roster (Moore's Helper date is October 6, 1941, compared with November 14, 1945, for Cooke), from which it will be seen that the Helper vacancy was properly awarded to Moore who was both senior and a protected employee under the February 7, 1965, agreement.

On May 10, 1966, Cooke bid for and was awarded a Signal Helper vacancy advertised at that time, such Helper vacancy being occasioned by senior Helper Cotkamp being awarded position as Assistant Signalman. However, Cooke immediately asked for a leave of absence to permit him to continue to work as Laborer in the Car Department at Raceland Car Shops, and thus Cooke has continued to work as Laborer at the Car Shops up to the time of preparing this brief.

Pending clarification of the matter of eligibility under the February 7, 1965, agreement and agreed-upon interpretations in connection therewith, the Carrier put to work in tentative manner signal employees who had worked as much as 84 days during 1964. It was in this manner that Frank Hardy, G. L. Howard, and K. R. Crowder were placed in advantageous "made work" during 1965 and 1966, in order to afford them the protection which had been tentatively arranged for them. They did not fill bona fide vacancies or new positions, but the work they were used on was purely "made" work for the single purpose of affording protection under the February 7, 1965, agreement.

During the period of this claim, or between August 16, 1965, and May 10, 1966, the Carrier calculates the difference between what Cooke did earn as Laborer in the Car Department and what he would have earned during this same period if he had been worked as Signal Helper as \$127.36.

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: The Organization bases this claim upon the alleged violation of Rules 50, 51, 52 and all Seniority Rules of the Agreement when Carrier recalled to service employees junior to Claimant and retained said junior employees in service from August 16, 1965 to May 10, 1966.

The facts are that Claimant, a Signal Helper, was furloughed May 1, 1964 and has worked thereafter in Carrier's Car Department from May 13, 1964 to the present.

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. 114 and therefore this claim should be dismissed.

Carrier relies on Award No. 114 of Special Board of Adjustment No. 605 and alleges that the claim before the Board was decided by said Disputes Committee and therefore we should dismiss this claim.

The issue submitted for determination by the Disputes Committee was:

"Were the rights of Signal Helper Cooke, and unprotected employee under the February 7, 1965 Agreement, violated when the Carrier gave unbulletined work to protected employees junior in seniority to Cooke, in order to comply with the requirements of the February 7, 1965 Agreement?"

The Committee decided in the affirmative and relied on Award No. 91 of said Special Board as controlling in deciding said question.

Award No. 91 said:

"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.)

Therefore, we find that the Disputes Committee decided the question solely on the interpretation of the February 7, 1965 Agreement. The Claimant is not alleging herein before this Board that Carrier violated the February 7, 1965 Agreement. Claimant is alleging that Carrier violated the "seniority" rules of the Signalmen's Agreement. Therefore, Carrier's contention in this regard is without merit and must be dismissed.

It is undisputed that Claimant was senior to the protected employee used by Carrier to work the position in question. Therefore, we find that a vacancy occurred and that Carrier violated the Agreement and in particular Rule 50(a) when it failed to bulletin said vacant position in order to afford Claimant an opportunity to bid in on said position.

In regard to damages, Carrier contends that Claimant was given employment in the Car Department on May 13, 1964 and that he is still at work in that department; that on May 10, 1966, he was awarded a position as Signal Helper but elected to remain in the Car Department and was granted leave of absence.

In view of the aforesaid, we find that Claimant is entitled to damages for the period of August 18, 1965 to May 10, 1966 when he refused Signalmen's work, and therefore he is entitled to the difference in pay of the position in question and the pay received while working in the Car Department.

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 in accordance with the 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.