



Award Number 17792

Docket Number SG-18241

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis X. Quinn, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railroad Signalmen on the New York, Susquehanna and Western Railroad Company that:

- (a) Carrier violated Article V, the time limit provisions, of the August 21, 1954 National Agreement, when Chief Engineer Charles P. Dieckhoff failed to render a decision on appeal presented to him by General Chairman W. D. Wilson on January 16, 1968, as follows:

" . . Claims on behalf of Signalman E. Nieweglowski and Assistant Maintainer William Penc, protected employes under the provisions of the February 7, 1965 Agreement and other rules, which claims arose as a result of the Carrier's abolishment of several positions, including the position of Signalman, Signal Section North Hawthorne, N. J., effective close of tour of duty October 31, 1967."

Will you please acknowledge and advise when payment will be allowed.

- (b) Carrier be required now to comply with the mandatory requirements and provisions of Article V, Section 1 (a), (b), and (c), of the August 21, 1954 National Agreement and allow the claims as presented.

**EMPLOYEES' STATEMENT OF FACTS:** This dispute originated because Carrier made force reductions which we contend were violative of the provisions of the February 7, 1965 Mediation Agreement; however, it is being presented to this tribunal because of Carrier's failure and/or refusal to comply with the time limit provisions of Article V of the August 21, 1954 Agreement.

Carrier's October 20 and 24, 1967 notices of job abolishments are attached hereto as Brotherhood's Exhibits Nos. 1 and 2. Pertinent exchange of correspondence between the Organization and the Carrier is attached hereto as Brotherhood's Exhibits Nos. 3 through 13; it shows the dispute has not been properly handled by the Carrier, but that it has been handled up to and including the officer of the Carrier designated to handle such disputes, without satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 1, 1945 which, as amended, is by reference thereto made a part of the record in this dispute. The August 21, 1954 Agreement is also by reference made a part of this record.

(Exhibits not Reproduced)

**CARRIER'S STATEMENT OF FACTS:** There is in effect on this property an agreement effective April 1, 1945 between the Carrier and Brotherhood of Railroad Signalmen covering working conditions and compensation of employees represented by that Organization, which agreement is by reference made a part of this Submission. The Carrier and the Organization have also been parties to all National Agreements since that time.

Effective October 31, 1967 due to reduction in business and loss of revenues the position of signalman at North Hawthorne was abolished, which position was held by Mr. Nieweglowski. Mr. Nieweglowski was on vacation at the time and upon his return displaced Assistant Maintainer Penc located at Hackensack. Committee claimed both men were protected employees under the provisions of February 7, 1965. It developed in investigation and conference that Nieweglowski was continued at Signalmen's rate, leaving only Penc to be considered. Further on or about December 15, 1967 Mr. Penc was recalled to service as Signalman, at signalman's rate and that, therefore, claim for Mr. Penc terminates as of that date.

**OPINION OF BOARD:** In the latter part of October 1967 the Carrier made some reductions in its signal forces which resulted in one Claimant being furloughed and the other being required to take a lower rated position. Claim was timely submitted by Local Chairman to the Signal Supervisor that the reduction in force constituted a violation of the provisions of the Job Security Agreement of February 7, 1965. The Signal Supervisor timely denied the claim. The claim was then appealed by the General Chairman to Carrier's Chief Engineer, who failed to make denial thereof.

The question of whether a violation of the Job Security Agreement of February 7, 1965 occurred is not before us. The only claim presented here is the claim that Carrier failed to deny the claim within the time specified in Article V of the Agreement of August 21, 1954. Carrier's defense in this respect is limited to an assertion that there was a mutual unwritten understanding that time limits would not be invoked. No evidence whatever is submitted in support of this contention.

Under the circumstances here present we can only hold that Carrier violated the provisions of Article V of the Agreement of August 21, 1954 and that the claim must be allowed as presented in accord with the National Disputes Committee Decision #15 dated March 17, 1965.

**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 Article V of the Agreement of August 21, 1954 was violated.