

Award No. 17996
Docket No. SG-18508

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

(a) Carrier violated the meaning and intent of Rules 30, 36(a), and 43 when it refused to apply these rules in good faith in the case involving a furloughed employee, Miss Amanda Durham.

(b) Carrier now be required to reinstate Miss Durham to her Assistant Signalman's position at the Marshall Signal Shop (Gang No. 320), with full pay for all time lost (\$3.0143 per hour), insurance coverage, and all other rights and benefits provided for in Agreements between the parties, effective March 18, 1968, and continuing until violations (a) above cease. (Carrier's File: B-315-18.)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute bearing an effective date of May 1, 1957, as amended, which is by reference made a part of the record herein. Pertinent rules of that agreement are:

"RULE 30.

Seniority shall consist of rights based on relative length of service of employees as hereinafter provided."

"RULE 36.

(a) When employees laid off for reason of force reduction desire to retain their seniority rights, they must file their addresses with the Signal Engineer and with the General Chairman within ten days from date of reduction and thereafter not later than January 1st each year. They must immediately notify both the Signal Engineer and the General Chairman of any change of address. Failure to comply with these provisions or to return to the service within fifteen days after being notified by the management will cause forfeiture of

As evidenced by our Exhibits Nos. 1 through 27, this claim was handled on the property in the usual and proper manner, up to and including the highest officer of the carrier designated to handle such disputes, without receiving a satisfactory settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is an agreement in effect between the parties hereto rewritten effective May 1, 1957, which is on file with your Board and which is made a part hereof by reference.

2. The Employes' Statement of Claim requests that the Carrier be required to reinstate Assistant Signalman Amanda Durham to service effective March 18, 1968, "and continuing until violations (a) above cease." On February 1, 1969, General Chairman J. J. Morris wrote the Carrier, advising that the claim for time lost is for March 18 through October 31, 1968, since Claimant was notified to report for work on November 4, 1968. Accordingly, the claim before your Board is for time lost for the period March 18 through October 31, 1968.

3. The service record of Amanda J. Durham is as follows:

- 8-31-43 Employed as Signal Helper
- 1-16-44 Promoted to Assistant Signalman
- 9-23-60 Furloughed account reduction in force
- 3-4-68 Recalled to service and reported for work
- 3-15-68 Laid off in force reduction
- 11-4-68 Returned to service and continues to be employed as Assistant Signalman at Marshall, Texas

4. The claim covers the period while Claimant was furloughed from March 15, 1968, to November 4, 1968. Since Claimant is a female employe, she is qualified to perform Assistant Signalman work in the shop at Marshall, but is not qualified to perform work in the field with a gang engaged in construction work. The claim is based on the contention that the Carrier violated the agreement when the Carrier did not make an Assistant Signalman position in the Signal Shop at Marshall available to the Claimant. The claim was presented to the Superintendent of Signals and Communications and appealed to the General Manager, and then to this office. Since no merit could be found for the claim, the claim was denied and has now been progressed to your Board.

OPINION OF BOARD: The record indicates that positions were advertised in the usual manner under the rules; assignments to such positions were made in the usual manner and positions were either abolished or the bulletins cancelled in the usual manner under the rules. The record also indicates that the Carrier erratically advertised for an Assistant Signalman and then cancelled the bulletins after the Claimant bid for the job. The errant behavior of the Carrier is demonstrated when the Claimant reported for work and was told that she would not be permitted to work and an abolishment

notice covering her position was issued the next day. The record indicates a reaction against the Claimant because she was female, and such discriminatory action is a violation of the meaning and intent of Rules 30, 35(a) and 43. It is the understanding of the Board that the Claimant has been subsequently reinstated. She is hereby awarded full pay for the time lost from March 18 through October 31, 1968. The claim for insurance coverage for this period is not valid.

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.

AWARD

Claim sustained as indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1970.

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****Interpretation No. 1 to Award No. 17996****Docket No. SG-18508****Name of Organization:****BROTHERHOOD OF RAILROAD SIGNALMEN****Name of Carrier:****THE TEXAS AND PACIFIC RAILWAY COMPANY**

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

A Claim for vacation or payment in lieu thereof for the year 1969 could not have been included in the claim initiated with the Carrier on May 13, 1968, because in any event no such vacation or payment in lieu thereof could have been due the Claimant prior to the year 1969, and claims may not be presented months before the occurrence on which they must, of necessity, be based.

It is well settled by numerous awards of this Board that it will not, under the guise of interpretation amend or broaden the claim progressed to the Board to include claims or demands not before it nor handled in the usual manner on the property prior to the time the dispute reaches this Board for decision.

This Board did not have in mind a claim for 15 days vacation or payment in lieu thereof for the year 1969 when it sustained the claim. Therefore, nothing further is due the Claimant under the Award of this Board.

Referee Francis X. Quinn, who sat with the Division as a neutral member when Award No. 17996 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 22nd day of October 1971.

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