

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John B. Criswell, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**PENN CENTRAL COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Company (former Pennsylvania Railroad Company) that:

(a) Carrier violated agreements in accordance with Article IV, Section 16, of the Current C. & S. Agreement, entered into by D. L. Moore, Superintendent-Personnel and R. A. Myers, Chairman, Brotherhood of Railroad Signalmen, Local No. 1, and the agreed-upon settlement on October 27, 1965, which is in violation of the Federal Court Order in connection with the settlement made by Evans, Ivory and Evans, Attorneys at Law, on behalf of Mr. R. F. Mohr, also the agreement dated February 7, 1965, and possibly other rules of our C. & S. Agreement.

(b) On December 28, 1961, personal injury was sustained by Mr. R. F. Mohr in the vicinity of mile post 178 caused by flying object from Train No. 25. As a result of the injury sustained by Mr. Mohr on December 28, 1961, settlement was made on his behalf by Evans, Ivory and Evans, Attorneys at Law, with the Pennsylvania Railroad Company on October 27, 1965. A cash settlement for \$20,000 was part of the settlement and he was also placed on a signalman's position by agreement under the terms of Article IV, Section 16, to become effective October 27, 1965, as the remainder of his settlement.

(c) Bulletin No. 34, Seniority District No. 9, dated June 30, 1967, addressed to employee concerned, abolishing the position occupied by R. F. Mohr, effective at close of work July 10, 1967, is also in direct violation of our C. & S. Agreements and should be withdrawn.

(d) R. F. Mohr be placed in his position as agreed upon in accordance with the provisions of the Federal Court settlement under date of October 27, 1965, and that he be compensated at the Signalmen's rate of pay for all time that he was forced to lose account of his position being abolished July 10, 1967. [Carrier's File: System Docket No. 644 - Allegheny Division Case No. 63-62]

**OPINION OF BOARD:** The Claimant was ruled to be a permanently disabled employe as the result of a court action which awarded him damages in a certain amount of money and return to a position with the railroad.

He was so assigned, but in less than two years the job to which he was assigned was abolished. We will not consider the action of the court or in any way attempt to interpret its intent or whether or not the intended result has been met. (Award 3691)

We will only consider the issue of whether the Agreement as cited would prohibit Carrier from abolishing the position of the permanently disabled employe-claimant.

The Organization argues that Article 4, Section 16 prohibits the abolishment, and that the Carrier's act was in violation. Paragraph C of said article is pertinent. It provides:

"(c) A position, while occupied by such permanently disabled employe, shall not be subject to the seniority or advertising provisions of this Agreement, except that a permanently disabled employe placed in such position may be displaced by a senior qualified permanently disabled employe who has been assigned to a position under paragraph (a) of this Section."

The Agreement discusses displacement and how this might be accomplished. It does not discuss abolishment. There are apparently no restrictions as to abolishment other than those outlined elsewhere in the Agreement. When assigning an employe, as was done with Claimant, under the provisions of this Article, we conclude the position might be abolished. We will not, however, determine whether this is in keeping with the intent of the court settlement.

**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 not violated.

#### **AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

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