



Award No. 19003

Docket No. SG-19391

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) Carrier violated Rule 36(e) when Mr. F. Sluga was displaced off Job No. 012-45 on Bulletin No. 5A, dated March 10, 1970, by Mr. Andrew Leach.

(b) Carrier now be required to compensate Mr. Sluga under Rule 20(a), and also the benefits due Mr. Sluga under the December 23, 1969 Agreement (Award 298) from March 27, 1970 continuing until Rule 36(e) is complied with.

(Carrier's File: 79-17-61)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute, bearing an effective date of June 1, 1951, as amended, which is by reference thereto made a part of the record in this dispute. Pertinent to this dispute are Rules 8, 20(a), 36 and 38, which are quoted here for ready reference:

"STARTING TIME — CHANGE IN.

8. Assigned starting time will not be changed for temporary periods, except by agreement between the supervisor and local chairman.

Five days' written notice will be given of change in assigned starting time of positions outside of central seniority district.

When the starting time of a position in the central seniority district is permanently changed, the position will be abolished and re-established by bulletin as a new position.

EMERGENCY WORK.

20. (a) An employee assigned to a section, shop, or plant will not be required to perform work outside such section, shop, or plant not

tenance positions on the Central Seniority District from 7:00 A.M. to 6:00 A.M., Mr. Hodge's position, Job No. 100-22, was abolished in Bulletin 5 and reestablished in the same bulletin with a new starting time, along with a large number of other positions on the Central Seniority District. Mr. Hodge submitted a bid on his reestablished position, but under Rule 38(a) the closing date for bids on the readvertised position was March 15, 1970. Since he could not be assured that he would be the senior bidder, he also exercised displacement rights as permitted under Rule 36(c) and (e), which required that he advise his supervisor of his choice of position within 3 working days. This gave him until March 8 to make his choice, and he exercised displacement rights on Job No. 001-13 held by Mr. Leach. Under Rule 36(e), since they were subject to displacement as result of the abolishment of positions, Messrs. Leach and Sluga were also required to advise their supervisor of their choice of displacement by March 8, 1970. Mr. Leach chose to displace Mr. Sluga, and Mr. Sluga chose to displace a junior man on a fourth position.

On March 10, 1970, Bulletin No. 5-A was posted by the Signal Supervisor, notifying all employees concerned of the displacements that were made on account of the positions abolished in Bulletin No. 5 of March 5, 1970. However, while under Rule 36(e) the affected employees should actually have moved to the positions of their choice on the basis of displacement rights on March 10, 1970, the local chairman and the Signal Supervisor agreed that because many of the men on the abolished positions would be the successful bidders on the reestablished positions, the incumbents would be permitted to remain on such positions until March 17, 1970, when the new assignments were made. The names of the successful bidders were posted on March 16, 1970.

Under that arrangement, then, even though Mr. Leach was displaced by Mr. Hodge, Mr. Leach continued to work on Job No. 001-13 until March 16, and likewise the claimant, Mr. Sluga, although he was displaced by Mr. Leach, was permitted to continue working on Job No. 012-45 through March 16, 1970.

On March 17, 1970, Mr. Leach was permitted to move to the assignment of his choice, previously held by the claimant, on the basis of his exercise of displacement rights, when displaced by Mr. Hodge. However, the employees contend that because Mr. Hodge never actually moved to Job No. 001-13 (held by Mr. Leach prior to March 17), Mr. Leach was not displaced, and therefore his application for the claimant's position was void, under the provisions of Rule 36(e).

The facts show that Mr. Leach was displaced by Mr. Hodge as of March 10, 1970, and the claimant was displaced by Mr. Leach as of that date, even though Mr. Hodge was permitted to remain on his bulletined assignment and Mr. Leach was permitted to remain until March 16 on the position from which he had been displaced. Accordingly, the claim for March 17, 1970 and subsequent dates in behalf of Mr. Sluga has been declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to the claim are not in dispute. On March 5, 1970, employee Hodge was assigned to Job No. 100-22, employee Leach to Job No. 001-13, and Claimant to Job No. 012-45. On that date, Hodge's position was abolished in Bulletin 5 and reestablished with a new starting time. Hodge submitted a bid on his reestablished position, but the closing date for bids was not until March 15, 1970. Uncertain as to whether he would be reassigned his former position, Hodge exercised his displace-

ment rights, and chose to displace Leach, and Leach, in turn, chose to displace Claimant who displaced a junior man on a fourth position.

On March 10, 1970, the date for assignment to other positions as a result of displacement per Rule 36(e), the employees were notified of the above mentioned displacements. However, the local chairman and the Signal Supervisor agreed that because many of the men on the abolished positions would be the successful bidders on the reestablished positions, the incumbents would be permitted to remain on their positions until March 17, 1970, when the new assignments were made. While Hodge never moved to Leach's position, Leach did displace Claimant.

Thus, the issue involves the interpretation of Rule 36(e) in order to determine whether or not Leach was displaced within the purview of that Rule, and thus properly allowed to displace Claimant. If Leach was not displaced by Hodge then his displacement of Claimant is void due to the application of Rule 36(e). However, it is not disputed that if Leach was properly displaced, then his displacement of Claimant is valid.

It is Petitioner's contention that Hodge never actually displaced Leach, his application to displace was merely a "paper displacement," not a "physical" one, since he never moved into Leach's position.

We cannot agree with Petitioner's contention. When Hodge filed his application for displacement on March 8, 1970, and when Carrier notified the employees of the displacements that were made on March 10, 1970, this is all that was required by Rule 36(e). The new assignments became effective March 10, 1970, and it is irrelevant that a collateral agreement was entered into allowing the incumbents to remain on their positions until March 17, 1970. To alter the clear language of Rule 36(e) by requiring a physical change of assignments before any displacement became effective would be beyond our jurisdiction. This Board is without jurisdiction to add to, alter, or change the duly negotiated agreement, and to decide otherwise in the claim before us we would be doing just this. Therefore the claim must be denied. The decision of the Board herein obviates the necessity of discussion of other issues raised in the submission.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.