

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19225
Docket Number SG-19202

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Penn Central Transportation Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

(a) The Company violated Article 4, Section 11(a), (b), (c), (d), Article 4, Section 18(a), and Article 4, Section 20(a), (b), (c), when the employe was not given the opportunity to bid a job due to his sickness and absence, also due to the Company's neglect to insure each employe a right to the advertisements which they are by agreement to post for each employe to have the advantage and opportunity to bid without discrimination. If the Company claims the control and jurisdiction of seniority and roster then it's their responsibility to see each man receives that opportunity through its office.

(b) Mr. A. J. Rush, Jr., be placed on the roster above Mr. H. E. Algard, Jr.

/System Docket No. 671 - Eastern Region-Chesapeake Division Case No. 221/

OPINION OF BOARD: Claimant A. J. Rush, Jr., an Assistant Signalman on the Carrier's Chesapeake Division was off duty on account of sickness from September 22, 1967 to October 16, 1967, inclusive.

On Bulletin No. 905, dated September 26, 1967, Carrier advertised a Signalman position, then awarded it to H. E. Algard, Jr.. When Carrier put Mr. Algard ahead of Mr. Rush on the seniority roster in the Signalmen class, the instant claim was initiated. The Organization contends that Mr. Rush should be on the roster above Mr. Algard.

The Carrier disagrees with the argument of the Organization that Claimant A. J. Rush, Jr., upon his return from illness on October 17, 1967, should have been assigned to the Signalman's position which had been assigned to H. E. Algard, Jr.. The Carrier contends that under Article 4, Section 3(a) the "seniority of employes in a particular class shall begin at the time they acquire an advertised position in that class in the district in which employed,..." Carrier states that since H. E. Algard, Jr. acquired a position of Signalman on October 12, 1967 and Claimant acquired a position of Signalman on November 15, 1967 H. E. Algard is senior to Claimant in the Signalman class.

The Organization, on the other hand, asserts that Article 4, Section 20(c) of the Schedule Agreement is controlling. This rule states, in part, that an employee, on returning to work following illness, "may within ten (10) days after return to duty exercise seniority to any position bulletined during his absence."

Carrier submits that since H. E. Algard was awarded the advertised position on October 12, 1967 while Claimant was sick the former has a seniority advantage with which the Board may not interfere. We disagree. The purpose of Article 4, Section 20(c) is to make certain that an employee who is ill does not lose his chance for new positions because of such illness and the design of the rule is to give him the same chance he would have had absent the illness. Had he not been sick Claimant would have possessed a seniority edge over Mr. Algard since both had a May 3, 1967 date as Assistant Signelman with Claimant preceding H. E. Algard, Jr. on the roster. Thus, Mr. Algard could not obtain a firm seniority date in the new position of Signelman except subject to Claimant's rights.

Although Article 4, Section 20(c) allows 10 days to employees returning from illness to exercise their seniority rights to positions bulletined during their absence, it is clear from the record that Claimant did not know of the existence of the new position and the fact that it was awarded to Algard until he, Claimant, made inquiries as to the cause of his position on the 1968 seniority roster being inferior to Algard. The Board is of the opinion that the 10 days did not start to toll until Claimant became aware of what had happened while he was ill.

Moreover, we find no violation of the Time Limit on Claims Rule which calls for the submission of claims "60 days from the date of the occurrence on which the claim or grievance is based." Claimant was unaware of his potential cause of action until he saw the 1968 roster and there is no allegation that he did not act within sixty days thereafter. Seniority is an important right which Claimant should not lose because Carrier has failed to advise him of a position bulletined while he was ill. We hold that in this particular case the time limits did not begin to run until there was knowledge on the part of Claimant of the existence a cause for action.

In view of the foregoing, the claim is sustained.

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;

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killam
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.