

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20276  
Docket Number SG-19914

Joseph **Lazar**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Chicago, Milwaukee, St. Paul and Pacific **Rail-**  
(road Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brother-  
hood of Railroad Signalmen on the Chicago, Mil-  
waukee, St. Paul and Pacific Railroad Company (Lines East) that:

(a) Carrier violated the current Signalmen's Agreement,  
as amended, particularly Rules 65 and 66, when it assigned G. T.  
Schaning **to** the Signal Maintainer position at Franksville, Wisconsin,  
effective December 1, 1970.

(b) Carrier should now be required to compensate Assist-  
ant Signalman R. J. Marko at the penalty rate for each **8-hour** day,  
five days per week, commencing December 1, 1970, and continuing as  
long as this position continues to be improperly filled.

/Carrier's File: F-10721

OPINION OF BOARD: On July 14, 1970, the Carrier issued the following  
Bulletin No. 138-70:

"TO EMPLOYEES CONCERNED:

The following position is hereby advertised for  
bids in accordance with the Signal Department Employees'  
Agreement. Applications should be sent to the undersigned  
where they will be received up to 12:00 o'clock **Noon**,  
July 24.

TITLE OR POSITION:

**HEADQUARTERS:**

RATE OF PAY:

HOURS OF SERVICE:

ASSIGNED TERRITORY:

Signal Maintainer

Franksville, Wisconsin

\$3.7837 per hour

7:00 A.M. to 12:00 Noon

1:00 P.M. to 4:00 P.M.

From Signal 14-R, **Stur-**  
**tevant** to Signal 73-5,  
not inclusive, on the  
westward main. Signal  
73-4 to Signal 16-R,  
Sturtevant, not **incl.**  
on the eastward main.

"REGULAR DAYS OFF DUTY:	Saturdays and Sundays
PERMANENT OR TEMPORARY:	Permanent
BRIE DESCRIPTION OF DUTIES:	Maintenance of above <b>signalling"</b>

No bids were received for the position advertised. Consequently, on July 28, 1970, Signal Bulletin No. 142-70 was issued, reading:

"TO EMPLOYEES CONCERNED:

The permanent position of Signal Maintainer at **Franksville**, Wisconsin was recently bulletined in the Middle-Northern District, but there **were** no bids received for the job. If there are any Southern District employees interested in the job, applications should be filed within the next ten days, and they will be given consideration."

No bids were received from any employees. On August 22, 1970, an employee junior to Claimant requested on-the-job training to qualify for the position, and he was given the training. On December 1, 1970 he was assigned **to** the position. Claimant made no application for the position, expressed no desire whatsoever either verbally or otherwise for the position, **and** was fully employed and under pay and lost no earnings as a result of the alleged violation of the Agreement, Rules 65 and 66, reading as follows:

"RULE 65.

New positions or **vacancies** which are expected to be of more than six (6) months duration shall be bulletined as permanent within thirty (30) days previous to or ten **(10)** days following the date such new position is created or vacancy occurs. New positions or vacancies of more than thirty (30) days and less than six (6) months duration will be bulletined within the above stated time limit as temporary. Except when temporary vacancy is due to physical disability of employee, a position which has been bulletined as temporary and does **in** fact exceed six (6) months, will be **re-**bulletined at the end of six (6) months as permanent. If a position being filled under a temporary bulletin is abolished, the incumbent may **return** to his former position. The following note will apply to Lines West only:

Note: Where an **employee** is the successful bidder on a **temporary** seasonal foreman's position, such six (6) months temporary period may be extended, by agreement, for an additional three months. Such agreement, **between** the **Ass't** to Vice President and the General **Chairman**, must be in writing and cover only the specific

"seasonal job in question."

"**RULE 66.**

(a) Assignments to new positions or vacancies will be made after bulletin notice has been posted for a period of ten (10) days and sent to all employees entitled to consideration in filling the position and to Local and General Chairman during which time the employees may file their applications with the officer whose name appears on the bulletin. The appointment will be made and the **name** of the successful applicant announced within a period of twenty (20) days from the **posting of the bulletin**, together with the names of all **employees bidding on the position**.

(b) Transfer of successful applicants to new **assignments** will be made within fifteen (1.5) days after close of the bulletin. **New** positions or vacancies may be filled temporarily pending permanent appointment."

The Organization states that "The instant dispute arose because of the manner in which Carrier filled a vacant position \* - by appointing an **employee** who did not bid, after the bulletin closed, rather than according to and within the period required under the bulletining and **assignment** rules." It is the Position of the Brotherhood that there is no provision in the Signalmen's Agreement whereby a position can be filled permanently without the benefit of a bulletin pursuant to Rule 65, and assignment pursuant to and within the **time** period prescribed in Rule 66. As stated by the General Chairman, if there are no bidders when the position is bulletined, the vacancy still exists and the position should be rebulletined under Rule 65 until it is filled by a successful applicant."

The Carrier, in letter of July 30, 1971, by L. W. **Harrington**, Vice President-Labor Relations, Carrier's Exhibit C, takes the position:

"Please be advised I do **not** find any provision within the Signalmen's Agreement that provides for the **rebuletining** of positions once a position has been bulletined and no bids are received. It is significant to note that while you make this contention, you did not cite any provision within the agreement to support it.

Rule 66 (a) which you allege has been violated in the instant case, provides in pertinent part that,

'The appointment will be **made and** the **name** of the successful applicant **announced** within a period of twenty (20) days from the posting of the bulletin, together with the names of all **employees** bidding on the position.'

What the above contemplates is that there will be a successful applicant for a particular bulletined position and the appointment of such a successful applicant will be announced within a period of twenty days from the date the bulletin was posted. In the **instant** case, if there had been a successful applicant for the position in question when it was bulletined, the appointment would have been handled in accordance with the provisions of Rule 66 (a). Inasmuch as there was no successful applicant for the position in question, your contention that the Carrier violated said rule is completely without merit and foundation."

This Board has studiously considered the language and apparent **intendment** of Rules 65 and 66 of Agreement. We are compelled by the explicit **terminology** of these rules to declare, in the language of the Carrier, that we "do not find any provision within the Signalmen's Agreement that provides for the rebulletining of positions once a position has been bulletined **and** no bids are received."

It is axiomatic that this Board does not make **new Agreements** for the parties. It is well settled that this Board must accept Agreements **as** made by the parties and must not insert or delete words under the guise of construing unambiguous provisions. We **must** accept the provisions of Rules 65 and 66 as adopted by the parties.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.