

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20342
Docket Number SC-20142

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western **Transportation** Company)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of **Rail-**
road Signalmen on the Chicago and **North Western Railway**
Company that:

Claim No. 1.

(a) On or about July 6, 1971, the Carrier violated, and continues to violate the provisions of the Memorandum Agreement applicable to District **Signal** Foreman effective July 1, 1956, when it failed to bulletin and/or appoint a District Signal Foreman from the Signalmen's class after Mr. J. Chalapy retired as District Signal For-.

(b) The Carrier now be required to reimburse Mr. J. Schuhrke the difference between his rate of pay and that of the District Signal Foreman's from July 1, 1971, and continuing until Carrier complies with the Agreement.

/Carrier's File: 79-17-667

Claim No. 2.

(a) **On** or about November 20, 1970, the Carrier violated, and continues to violate, the provisions of the **Memorandum Agreement** applicable to District Signal Foreman effective July 1, 1956, when it failed to appoint a District Signal Foreman from the Signalmen's class after it was bulletined to the District Signal For- and no bids were received.

(b) The Carrier now be required to reimburse Mr. T. Olliges the **difference** between his rate of pay and the District Signal Foreman's rate of pay, starting 60 days prior to the date of this **claim** and continuing until Carrier complies with the Memorandum Agreement.

/Carrier's File: 79-17-657

OPINION OF BOARD: In November, 1970, the District Signal Foreman at Mayfair retired. The Carrier bulletined the position but **when** no bids were **received**, it did not appoint **an** employee to the position.

Upon the retirement of a District Signal Foreman in July, 1971, the Carrier neither bulletined, nor **filled (by** appointment) the position.

Both claims are submitted here under the Organization's contention that Section 9 of its **Memorandum** Agreement requires that all **new** or vacant **positions** of District Signal Foremen of thirty (30) days or more duration, will be bulletined for a period of ten (10) days and if no applications are received from qualified foremen in the district, the position **will** be filled

by **appointment** of the best qualified **individual** in the signalmen's class in the district. **The** Organization contends **that** the wording of the **memorandum** is mandatory **and** that a failure to fill the positions is a violation.

The **Claimant** asserts that **Carrier** violated Article V, Section 1(a) of the Agreement by the **manner** in which initial denials of the **claims** were conducted. The quoted section of the Agreement requires a denial to contain written reasons for such disallowance. The denials of the claims stated, "I **can** see no **rule** to base this claim **on** **and** therefore, your claim is **denied**."

We have reviewed the authorities cited by the parties concerning the sufficiency of answers to claims. We note that the quoted **denials** were in response to **claims** which were themselves not specific and merely **alleged** a violation of the Memorandum Agreement when the Carrier failed to appoint employees to the **foreman's classification**.

Upon the facts of this **record**, we are unable to conclude that the Carrier violated the mandates of the Agreement as alleged by Claimant.

The Carrier asserts that **Claim** No. 2 **is** barred because a claim **was** not submitted within the mandatory **sixty-day period** of the failure to appoint to the foreman's position. **The** Organization concedes that more **than** sixty days elapsed, but urges that its claim is of a "**continuing** nature." We believe that the **claims** are deniable, on their merits and consequently, it **is** unnecessary to consider the dispute **concerning** the **nature** of the **claims**.

The Carrier defends its **action** on the **ground** that it **abolished** both positions. Concerning Claim No. 2, the **Carrier** states that it abolished the position when no one submitted a bid. Concerning Claim No. 1, **Carrier** asserts that it abolished the position upon the **retirement** of the former incumbent. A bulletin was issued on November 5, 1971, **confirming** that the positions had been abolished.

We believe that it is firmly established **that in** the absence of an Agreement restriction, a Carrier may abolish a **position**. See, for **example**, Special Board of Adjustment No. 371, Award No. 13 and **Third** Division Award No. 14738 concerning these **same** parties. **Moreover**, on the property, the Organization conceded that fact when it stated:

"We **agree with** the first part of Mr....'s denial that there is nothing in the schedule **which** requires a certain number of District Signal Foremen.... This claim however is not based on the **number** but on the Memorandum Agreement. If the Carrier did not **want** to fill the **position** they could have abolished the position **when re-tires . . .**."

In direct reply, Carrier cited the above language and stated:

"**This** in fact is what was done."

There is a suggestion that the delay in issuing a bulletin regarding the abolishment of positions (rather than issuing a notification coincident with the alleged **abolishments**) constitutes an admission that, in fact, the positions were not abolished at the times stated by Carrier.

While there is dispute as to whether **Rule** 36 of the Agreement is applicable to Foremen, nonetheless, the type of notification mentioned there does not apply here. Other than that reference, **we** have searched the pertinent documents in **vain** to discover any obligation by Carrier to issue any **formal** or **informal** bulletin or notification, orally or in writing, concerning abolishment of positions. Thus, we conclude that a belated notification is not, *in and of itself*, an admission. If there were a sharp factual dispute under which Claimant asserted that the position continued to exist during the **time** in question or that some individual performed duties of the allegedly abolished position, then, a belated bulletin might be **of some evidenciary** value in determining such a fact dispute. But no such arguments or **contentions** are advanced here.

The record fails to show that Carrier did anything other than abolish the positions; which was their right. We will **deny** the claim.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. M. [Signature]*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of July, 1974.