

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20468
Docket Number SE19938

Joseph **Lazar**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Brotherhood** of Railroad Signalmen **on** the Southern Pacific **Transporta-**
tion company:

(a) **That** the Southern Pacific Transportation Company (Pacific Lines) violated the **Agreement** between the Company and the **Employees** of the Signal Department represented by the Brotherhood of Railroad Signalman, effective April 1, 1947 (reprinted April 1, 1958, including revisions), and particularly Rules 48, **51**, and 70 of the schedule agreement, and the Agreement--Company File SIG 1-19 dated April 6, 1971, which we thought, perhaps naively, was negotiated in good faith.

(b) **That** Claimant Al. M Dickey be allowed \$886.56 per month, subject to applicable general wage adjustments, including retroactive adjustments beginning May 17, 1971, and continuing until he is properly assigned to the position of Special Signal Technician at Bakersfield, California, as advertised on Signal Department Notice No. 181 dated April 22, 1971, as Mr. Dickey made proper application for the position and was senior to the **employee** assigned to the position; Mr. Dickey's application was ignored. **/Carrier's File: SIG 148-190/**

OPINION OF BOARD: This claim arises out of the assignment of a man junior in seniority to Claimant. On April 22, 1971, Southern Pacific Transportation Company Signal Department Notice (Bulletin) No. 181 was posted, advertising a Special Signal Technician's position to cover entire San Joaquin Division, with headquarters at Bakersfield, California. Applications for this position could be made until May 7, 1971. Bids were received from San Joaquin Division Lead Signalman A. M Dickey, who had Class 3 seniority date of January 12, 1953, and from San Joaquin Division **Coderman** E. H. Phillips who had Class 3 seniority date of July 16, 1954. By **assignment** Bulletin No. 183, dated May 14, 1971, this position of Special Signal Technician was awarded and assigned to Mr. E. H. Phillips, an **employee** junior to Mr. A. M. Dickey, **Claimant**.

Special Signal Technician Memorandum Agreement (Carrier's File SIG 1-91) dated April 6, 1971, provides in paragraph 6 of the Agreement provision here in dispute:

*****When** a senior applicant is not given favorable consideration because of alleged lack of qualifications, **che** matter will be reviewed by the Signal **Supervisor** with the Local Chairman before a **perm-
anent** assignment is made."

It is the position of the Brotherhood that the Carrier violated the provisions of the quoted agreement when it failed to review the Claimant's alleged lack of qualifications with the Local **Chairman** before making the **assignment** for the position of Special **Signal** Technician at Bakersfield. The Carrier denies the factual correctness of the Brotherhood's position, stating in Carrier's letter of August 18, 1971 (Carrier's Exhibit **"F"**), as follows:

*****the** matter was reviewed by Signal Supervisor **Engle** with Local Chairman Dickey on May 14, 1971, in accordance with the agreement provision of SIG **1-91** that you have quoted. In conference you were furnished copies of **signed** statement by Signal Supervisor **T. V. Engle** attesting to that fact, as well as statement by Senior Assistant Signal Supervisor J. R. Ryan as to his knowledge of such discussion."

Mr. **Engle's** statement is made a matter of record by the Carrier (Exhibit **"H"**) and reads as follows:

"Memo for claim of **A. M. Dickey** of June 3, 1971 concerning Special Signal Technicians job:

On May 14, 1971, I talked to **Mr. A. M. Dickey** on the telephone told him we would get together Monday, May **17th**, and discuss the assignment **of** Special Signal Technician.

At this time he stated he was going on vacation next week and suggested that we discuss it at this time on the phone. I agreed with him and then I stated I was going to give the position to **E. H. Phillips**. At this time he asked me why and I stated that **Mr. Phillips** was the best qualified for the job. He then stated that he hoped that I **knew** what he was going to do and I told him we each have to do what we must.

Mr. J. R. Ryan, Sr. Asst. Signal Supervisor, was in my presence when this took place and heard my conversation with **Mr. Dickey**."

Following conference and final denial by the Carrier of the *instant* claim, on Oct. 21, 1971, Mr. Dickey wrote his General **Chairman** the following concerning the telephone discussion he had with Mr. Engle on May 14, 1971: (Carrier's Exhibit "**I**")

* * *

"Let it be **known** that as I have stated previously in my original claim there never **was** on May 14, 1971 or any other date any discussion between **Signal Supervisor** Mr. Engle nor Senior Asst. Signal Supervisor Mr. 3. **R. Ryan** and Local **Chairman** Dickey as to qualifications of either the Claimant Dickey or any one else.

The conversation Mr. **Engle** and Mr. **Ryan** refer to was on May 14, 1971 at that time Mr. **Engle** asked me if I would appear in Bakersfield, **Calif.** to discuss **assignment** of subject position at that **point** I ask Mr. Engle (without knowing Mr. Ryan was listening) if anything I would say or do would change the assignment to which Mr. **Engle** stated No as he had already assigned the position to another **employee.**"

The record is clear beyond any doubt that the dispute on the property dealt with the single and narrow question whether the procedural requirement of **review** set forth in paragraph 6 of Agreement quoted above was satisfied. Questions of substantive meaning and application, posing issues of qualification, or **substantive** scope of the language, "the matter will be reviewed", were not raised in the course of the usual handling on the property and are not properly before us for decision on the record before us. **The** claim as handled on the property from its inception was that there was a total absence of review under the Agreement prior to the **assignment** of the position in question. Not until after final conference and denial decision by the Carrier were substantive questions raised as to the meaning, scope, and timing of review pursuant to the **Agreement.**

Orderly handling of grievances under the Railway Labor Act requires both sides to a dispute to come together on the property and make a complete, **open** and honest disclosure of all relevant facts and arguments comprising their positions. Such behavior reflects a sincere and earnest effort to make use of reason and shared values for resolving conflict and, **in** its essence, is good faith behavior. See, in this connection, 325 U.S. 711, 721 n. 12; 307 **F.2d** 21, 41; 361 F. 2d 946. For awards of this Division holding that only issues raised during handling on the property may properly be considered by the Board, see Awards Nos. 10789, 14641, 18656, 19101, 19746, and **many** others. On the record before us, the Brotherhood may not properly raise for our consideration questions of good faith review under the quoted agreement.

There is no question on the record before us that on May 14, 1971, the Signal Supervisor requested, on the telephone, that he and the Claimant-Local Chairman "get together Monday, May 17th," but that **Claimant-Local** Chairman "stated he was going on vacation next week and suggested that we discuss it at this time on the phone." It seems unfair to charge a violation of the Agreement when opportunity for meeting pursuant to the Agreement is invited by the Carrier and is rejected by the Claimant-Local Chairman who requested telephone discussion instead. We think this conduct by the Claimant-Local Chairman conveys an intention to give up the proposed review opportunity with the Signal Supervisor, is done with full knowledge of the Agreement provisions, and estops the Brotherhood from asserting violation of the Agreement procedures. We fully appreciate how important and serious this matter was to Claimant-Local Chairman. His long service record and richly-varied experience and training undoubtedly gave him a belief in his qualification for the position in question, and denial of **assignment** undoubtedly shocked his sense of justice to the point that his personal involvement was far too great for him to act dispassionately as his own counsel and representative. Yet, he did so act, and since he was the authorized Local **Chairman**, we cannot say that the Carrier did not act in reasonable reliance thereon. In view of the circumstances in this case, we conclude that there was no violation of the Agreement by the Carrier.

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

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.