

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20472  
Docket Number SC20078

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**,  
( and Willard **Wirtz**, Trustees of the Property of  
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Lines West of Buffalo):

On behalf of Assistant Signal Maintainer M. J. **Richison** for a pay differential between that of Assistant Signal Maintainer and Signal Maintainer, for both pro rata and any punitive time involved, for dates of May 11, 12, 13, and 14, 1971, account Claimant working the position of Signal Maintainer (position **3B**), **headquarters** Jackson, Michigan.

OPINION OF BOARD: The **incumbent** of a Signal Maintainer position departed that **position** on or before May 3, 1971. Claimant was required to fill the position.

During the processing of the **claim** on the property, the **Claimant** cited **Rule** 43 (b) which states that:

"Vacancies in continuing positions will be bulletined within seven days following date such vacancies occur..."

Accordingly, **Claimant** insists that Carrier was required to advertise the position within seven (7) days subsequent to May 3, 1971. Because Carrier failed to do so, Claimant should receive the difference in pay between his rate and the Signal Maintainer position for May 11, 12, 13 and 14. Carrier **commenced** paying the higher rate on May 17, 1971.

Carrier states that the prior incumbent was temporarily assigned to another position on May 3, 1971, but was not permanently assigned to that position until May 11, 1971. Thus, it **urges**, no time limit requirement to bulletin the Signal Maintainer position could have existed until after that time.

As one of its defenses to the claim, Carrier argues that there is a substantial variance between the claim handled on the property and the one presented to this Board.

The original claim submitted to Carrier, on the property, stated:

"On May 3, 1971, Mr. M. E. Campbell, then Signal **Mntr.** on Gang 3-B Jackson, Michigan, was transferred to the position of Belay Inspector, Jackson, Michigan.

"**This** action by the Carrier caused a vacancy in a permanent position, namely Mr. Campbell's original position.

**This** vacancy in a continuing position should have been bulletined within seven (7) days, which it was not.

**This** violation of Rule 43 (b) deprived Mr. M. J. Richison, the oldest Asst. Sig. Mntf. on the Michigan Division. the opportunity of advancing his rate.

Thereby, consider this as an initial time claim, by the undersigned as Acting Local Chairman, in Mr. **Richison's** behalf, that:

(a) Carrier violated the current working Agreement, particularly **Rule 43 (b)**, when it did not bulletin the vacancy of Signal Maintainer, Section 3-B, Jackson, Michigan, on or before May 10, 1971.

(b) Carrier should now be required to compensate Mr. M. J. **Richison** the difference in rate of pay between Asst. Sig. Mntr. and Signal Maintainer for all hours worked, both pro rata, and time and one-half for the following dates: May 11, 12, 13, 14, **1971....**" (under-scoring supplied)

In subsequent handling on the property, Claimant continued to base his claim on the failure to bulletin under **Rule 43 (b)**.

However, the **claim** submitted to **this** Board makes no reference to **Rule 43 (b)** and seeks pay differential:

"...**account** claimant working the position.e." r -  
scoring supplied)

Thus, a reading of the claims suggests that two different theories of violation are presented. While, certainly, on the property, there was reference to Claimant working the position in question (and allegedly being entitled to a pay differential **commencing** May 3, 1971) nonetheless, the only rule cited was 43 (b), and the alleged contractual violation was that failure to follow that rule deprived Claimant of the opportunity of advancing his rate.

In the Submission to this Board, Claimant seeks damages because he actually worked the position.

Moreover, in **the Ex Parte** Submission, Claimant cites **Rule 42**:

"When an employee is required to fill temporarily the place of another employee receiving a higher rate of pay, he shall receive the higher rate therefor, but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

and ~~it~~ is urged that "Carrier should not be permitted to require an ~~em-~~  
~~ploye~~ to fill the place of another ~~employee~~ receiving a higher rate of  
pay, and not pay the employee filling such higher rated position the  
higher rate."

This Board can agree that it would appear that Claimant was  
entitled to receive the higher rate during the period in question under  
Rule 42. But, the record clearly shows that Claimant did not urge a viola-  
tion of that rule on the property. We noted, in Award 20166, that under  
such circumstances a claim may not be sustained.

We feel that the **claim** submitted to this Board does not encompass  
the claim as handled on the property. Under the Awards of this Board, the  
claim must be dismissed. See, among others, Award 19564, 20147 and 20132.

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 **claim** be dismissed.

A W A R D

**Claim** dismissed.

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

ATTEST:

*A. W. Paulsen*  
Executive Secretary

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