

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20970
Docket **Number** SC-20831

Irwin M. **Lieberman**, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and **North** Western Transportation Company:

(a) On or about **November 21**, 1972 the Carrier violated the current Signalman's Agreement, particularly the 5th paragraph of **Rule 17** when it would not place **Mr. A. E. Nenn**, Sig. Mtnr. at Pt. Washington, **Wis.** on the permanent **position** of Ldr. Sig. Mtnr. at Appleton, Wis. and **allow** him to work the temporary **position** of Sig. Mtnr. at Oshkosh, Wis., pending return of J. A. Meyer.

(b) The **Carrier** now be required to place Mr. **Nenn** per his request, as stated in his letter of **Sept. 14th** and **27th**, to the Sig. **Supr.**, to the position **as** stated in (a) above.

(c) The Carrier be required to compensate and/or reimburse Mr. **Nenn** for all compensation he may have lost by this violation. [Carrier's File: **79-13-16**]

OPINION OF BOARD: This dispute relates to whether or not an employee may exercise several options, seriatim, **upon** being displaced, under two different **Rules**. The Rules are:

"RULE 17 - Except in the Central Seniority District, **incumbents** of existing positions and those subsequently established in excess of one year, may elect to retain their positions or within fourteen consecutive calendar days exercise displacement rights if changes occur under the following conditions of their positions:

- (a) Assigned **days** off duty.
- (b) Headquarters.
- (c) Territorial limits.
- (d) Starting **time**, except due to Daylight. Saving Time.

If positions are vacated **as** provided for in this **rule** it **will** be bulletined as a new position.

Note: At, points where the territorial limits **are** changed and there are two or **more** positions of the same seniority class involved, one or more of which is abolished, **the senior employee**

"will make the first selection. ~~The~~ remaining employe or employes of the ~~same~~ seniority class may do likewise in seniority order."

"RULE 36 (c) - Except as provided ~~in rule~~ 35 (b), when force is reduced, position abolished, or employes displaced, ~~the~~ affected employe must advise proper **officer** within three **working** days from date of bulletin his choice **of** displacement, and, except ~~in central~~ seniority district he **will be** advised prior to position being abolished as to ~~whom~~ he may displace under rules applicable, so that such action may be taken on **working** day **following** date position is abolished. In the central seniority district the affected employe may displace **any junior** employe **of** his class assigned to a permanent **position**. Outside the central seniority district the affected **employe may** displace **any** junior employe in his seniority class assigned to a permanent position with **headquarters** in camp cars, or **assigned** to crew not engaged in the maintenance of a section, plant **or** assigned to a shop, **or** position under direction of Supervisor Communications & Signals or on a **second** or third trick position on a section or plant. ~~Illinois and Northwestern~~ seniority district employes may displace **any** one of the **three junior** employes, Western and Northern seniority district employes may displace **any** one of the seven **junior** employes of the same **class** holding a permanent position **assigned** to a section, shop, plant **or** relief position.

An employe having **displacement** rights may displace a junior employe on a **temporary** or 'pending **return**' position provided he **currently makes a** 'technical' **displacement** on a **permanent** position. An employe 'technically' displaced under provisions **hereof** will retain the right to remain on the **assignment** and **will** not be required to exercise displacing **rights** until actually **displaced**."

Petitioner argues that Claimant, having **taken** action under the **shorter** option (Rule 36 (c)) may **not** be denied the right to subsequently exercise the 14 day option. It is urged that Carrier's position would result in giving a **senior man only** three days in which to make a **displacement, whereas a junior man** would have fourteen.

It is interesting to note that in its submission, Petitioner states:

"Upon receipt of Bulletin #17, Mr. A. E. **Nenn**, the incumbent

"of the Leading Signal **Maintainer** position at Port Washington, the first **position listed thereon** a6 being abolished, exercised his displacement rights under the **Note** at the **end of Rule 17, and within the three-day period in Rule 36,** by placing himself on. . . .**the Signal Maintainer position** at Port Washington...."

It **might** be construed that the Organization **is saying** that his one choice **was** exercised under both rules. **However,** in **subsequent** argument Petitioner **insists** that **Claimant** has the right to **make** three different choices, as indicated in the Statement of **Claim**.

We cannot **accept** the logic of Claimant. **Although it is** true that he had to make a choice under either Rule, both **being** applicable to the situation, he could not make three choices. After he opted **for** the **Port Washington** position, he **was no** longer in a displaced **posture** and able to exercise any **further** option. Additionally, It **seems** evident that he did exercise the option contained in the **Note** to Rule 17, **supra**, and certainly had no **basis** for then attempting to use the **same Rule's** fourteen day provision. Even if, a6 Petitioner contends, his choice **was made pursuant to Rule 36 (c),** there **is no basis** whatever **for** a second and third option to be **exercised** since he was no longer being **displaced**. He **must** be confined to one rule application. The Claim **must** be denied.

FINDINGS: The **Third** Division of the Adjustment Board, upon the whole record and **all** the evidence, find⁶ 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: A.W. Paulos
Executive Secretary

Dated at **Chicago, Illinois, this** 27th day of February 1976.