

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21532**
Docket Number SG-21659

William G. **Caples**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

On behalf of the senior assistant signalman, **Mr. R.** W. Pearson, on Mr. Roberts gang, **#3**, Lines East seniority district, for the difference in his assistant signalman rate of pay and that of a signalman, account of not being stepped up to signalman to fill the temporary job vacated by Signalman **J. D.** Arrowood on gang 3. Claim is to be retroactive for 60 days from this April 5, 1975, date of initial claim letter/ date and is to continue until Mr. Arrowood's job is bulletined and filled by senior bidder or until Mr. **Arrowood** returns to the job. Carrier's file: **SG-109/**

OPINION OF BOARD: The parties to this dispute made an agreement which became effective on May 1, 1974. **That** agreement provided, inter **alia**, for the establishment of "System Signal Gangs" and for minimum crew consists on existing "District **Signal** Gangs."

Claimant Pearson was employed as an Assistant Signalman on District Signal Gang No. 3 when the temporary vacancy in a Signalman's position in that Gang occurred in **February, 1975**. Carrier avers that when the Signalmen's temporary vacancy was advertised, no bids were received from qualified **employees** in Lines East seniority district.

The **Employees** contend that Carrier was nevertheless required to fill the vacant position in order to maintain the minimum crew consist. The Carrier responds that no rule or provision of the governing Signalmen's Agreement requires the Carrier to fill temporary vacancies in positions of Signalman in District Signal Gangs by stepping up assistant signalmen who have not had sufficient training and experience to qualify for promotion.

The agreement governing promotion of assistant signalmen is set out in Agreement Rule 2(e) (3) of the parties' 1948 Agreement. The parties were cognizant of those provisions when they entered into the "System Gang Agreement", and they did not at that time, either expressly or impliedly, change Rule 2(e) (3). Consequently, we do not find that the parties intended that an unqualified assistant signalman should be promoted, thereby establishing seniority and other rights in the Signalmen's class, in circumstances such as these. However, they did provide in the later agreement for the maintenance of a minimum crew consist; it is clear that they intended that the positions listed be filled.

We hold, therefore, that the Carrier violated the agreement and that the Claimant should be paid as claimed. We expressly do not find that promotion can be had except as set out in Rule 2(e) (3).

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.

