

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22117**
Docket Number SG-22061

Louis **Yagoda**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company
((Former Texas & Pacific Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Texas and Pacific
Railway Company:

On behalf of Signal Maintainer C. L. Lyons, Grand Prairie, Texas, for an additional payment of \$650.72 (\$130.02 loss in pay October 13 through November 1, 1975; \$198.90 - Travel time between Dallas and Marshall, Texas, weekend trips - 900 miles, 30 hours @ **\$6.63 per** hour; \$81.00 - Auto mileage, 900 miles @ **9¢** per mile; **\$132.30** - Motel expense; and, \$108.50 - Meal expense), the loss sustained by him when the Carrier required him to transfer to Marshall, Texas on October 13, 1975, in violation of Rule 45(a) of the Signalmen's Agreement as the rule has been understood and applied for more than 30 years.

Carrier file: **K 315-1117**

OPINION OF BOARD: It is undisputed that in September, 1975, bids were advertised by Carrier for two signalmen jobs at Marshall, Texas and Claimant a signal maintainer headquartered at Grand Prairie, Texas was a timely and senior bidder in conformance with Rule 30 and Rule 45 (a) and was thereupon, also in timely fashion, notified to report to this assignment on *Monday*, October 13, 1975.

After Claimant had been notified to report to the Marshall assignment (September 26, 1975) and on the same day (September 30, 1975) that notice was sent to all connected with the Marshall activity that Claimant was to join them on October 13, 1975, another bulletin was issued advertising the opening of signal maintainer at Grand Prairie which was to be vacated by Claimant. The bids were stated to be due by October 10, 1975. **Claimant** asserts that he notified his Supervisor by phone on that date that he was bidding to go back to his former position at Grand Prairie, but Supervisor told him that inasmuch as the Superintendent Signals and Communication was away on vacation, the Supervisor had no authority to change the latter's instructions.

Thereupon a signalman junior to Claimant was appointed to fill the Grand Prairie **assignment** when vacated by Claimant. According to Claimant, his desire to return to his previous assignment at Grand Prairie was due to the fact that he had been unable to locate a suitable residence at Marshall. Nevertheless, pursuant to instructions connected with his earlier bid and **assignment**, Claimant began work at Marshall on October 13, 1975.

However, by letter dated October 28, 1975, Claimant was notified that he was the successful bidder for his old position at **Grand** Prairie and was to report there for such purpose on **November** 3, 1975. This was followed by a bulletin so assigning Claimant and Claimant resumed the Grand Prairie **assignment** on that date.

The position of the Brotherhood is that Carrier violated the Agreement between the parties "when it refused Claimant's request that he be permitted to remain on a position to wait for assignment as a Signal Maintainer on which he had placed his bid". That is, by not giving Claimant the benefit of remaining where he was for up to 29 days, Carrier caused Claimant to sustain the claimed losses in pay (which he would otherwise have received if he had remained in status quo for said period) as **well** as the stated losses in personal travel **time** between his residence in Dallas to his compelled assignment at Marshall, expense and loss of time for weekend trips between Marshall and his residence and also lodging and eating expenses caused by his being away from home.

As Agreement authority for their position Claimant and his Organization **invoke** Rule 45 (a) "as it has been **understood** and applied for more than 30 years."

Rule 45 (a) and (b) cited by Organization in this connection, read:

"Rule 45 (a) Transfer of successful applicants to new assignments will be made within thirty days after close of the bulletin. New positions or vacancies may be filled temporarily pending permanent appointment.

(b) **An employee** who bids in and accepts transfer to a position in a lower seniority class than that in which employed, voluntarily demoting himself, will forfeit all rights in seniority classes higher than the one to which he is so transferred."

Carrier takes the position that Claimant was properly assigned, in conformance with Rule 45, to a job for which he bid, to which he was entitled and at a place which became the site of his assignment once the bid was effectuated in accordance with the conditions under which said bid was issued and assignment made.

Claimant further states that as a practical matter, the machinery of placing an **employe** in an assigned locale and territory so that he may be relied on to fulfill the needed function there, must unavoidably be put into operation before the effective date of the duties to be met. This was done in respect to Claimant's bid for the Marshall position.

When Claimant bid back for resumption of the Grand Prairie job which he had previously asked to vacate, a fixed prospective date was necessarily again set for him to resume that position.

Carrier contends that Rule 45 (a) does not mandate that bidders be held on their old jobs for 30 days. On the contrary, it puts an outside limit of 30 days on the **time** allowed for Carrier to effectuate the transfer. The Rule was obviously intended to prevent delay, not insure it.

Nor, **in** Carrier's view, may it reasonably be argued that Claimant was hurriedly hustled off to the position for which he himself had initiated a demand. He had from September 18, 1975 to October 13, 1975 to prepare himself for the move, short only a few days of the 30 days **maximum** permitted by the Rule.

Carrier denies **that** Rule 45 (a) has been historically implemented as a 30 day holding practice on the bidder's old job, as contended by Organization. Although it speculates that instances **may** have arisen in which **employes** have **been** accommodated by a delay to the full permitted period when personal exigencies may have moved their supervisors to countenance such delays and under circumstances which did not impede operations by doing so, Carrier states that it does not know of a "practice" of this character and challenges Organization to cite a single such instance (invoking the principle that the Claimant party bears the burden of proving its case).

The Board agrees with Carrier's reading of Rule 45 (a) and does not find therein or in any other Rule cited an obligation for Carrier to maintain a "holding action" for a job bidder in his **pre-transfer** job for 30 days to allow him opportunity to change his mind

in mid-stream to recwer his old position after the machinery for transfer has been **firmly** put into place **in** accordance with requirements of Rule 45 (a). Nor has it been **shown** by Claimant (on whom such burden rests) that a practice has existed of such consistent, unbroken nature and in circumstances so essentially like those present here as to have the acted-out authority of acquiescent **commitment** equivalent to a controlling Rule corresponding to Claimant's position in the instant matter.

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 **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as apprwed June 21, 1934;'

That this Division of the Adjustment Board has jurisdiction wer 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **16th** day of June **1978**.