

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23199
Docket Number SG-23165

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Fort Worth and Denver Railway Company:

On behalf of Mr. A. Green, Assistant Signalman, for the Signal Foreman's rate of pay commencing October 30, 1978, until he is placed on the position of Signal Foreman, Signal Gang #1." Carrier file: SG-3. General Chairman file: FWD-78-181)

OPINION OF BOARD: Claimant, who is an Assistant Signalman with a seniority date of November 21, 1977 in Class II, contends that Carrier violated Rules 23 and 35 of the Signalmen's Agreement when it awarded the Class I Foreman's position of Signal Gang No. 1 to W.M. Carter. He argues that Mr. Carter did not establish seniority in the Class I Category, since he was a new employee, working under the probationary provisions of Rule 23, which rendered his employment temporary during the 60 day period.

Carrier disputes this interpretative analysis and contends that Mr. Carter, who began work on October 23, 1978 as a Signal Foreman, Class I established seniority as of that date, consistent with the clear language of paragraphs B and D of Rule 20. These provisions are quoted verbatim hereinafter:

Paragraph B. provides:

"Seniority begins at the time an employee's pay starts in the seniority class in which employed except that an employee performing temporary service in a higher class or temporary service in another will not establish seniority in that class."

Paragraph D provides:

"An employee will acquire and accumulate seniority in the seniority class in which he starts work and all lower seniority classes."

It argues that Rule 20 D confirms its position, since it stipulates that an employee's seniority tolls at the time he begins work.

In our review of this case, we concur with Carrier's assessment. Claimant had not established Class I seniority, despite his longer service with Carrier. The filling of the Class I Foreman's position with Carter did not represent a promotion from the Class II seniority category to Class I. Paragraphs B (supra) and D (Supra) of Rule 20 are specific and unambiguous provisions and provide that seniority begins and accumulates at the time an employee's compensation begins in the class in which employed.

Since Mr. Carter, although a temporary employee, accumulated seniority in Class I, effective October 23, 1978, and Claimant possessed seniority in Class II, it was not impermissible to award this position, in the absence of a more senior applicant in Class I, to Foreman Carter. Claimant did not have seniority in Class I and this unmistakable finding, given the rules cited herein, judicially requires that we deny this claim.

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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1981.