

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23277
Docket Number SG-23283

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Central of Georgia Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railroad Company:

On behalf of all Central of Georgia employees because Carrier abolished the Traveling Signal Maintainer position at Columbus, Ga., and rebulletined the job as a Signal Maintainer to evade the application of the rules of the Agreement and to avoid paying the monthly rate. (General Chairman file: CG25. Carrier file: SG-366)"

OPINION OF BOARD: The Carrier abolished one position, namely, traveling signal maintainer, and rebulletined the job as a signal maintainer.

The Organization filed a grievance with the Carrier maintaining that the position was substantially the same and that it was merely a change in the title. It was the same kind of work, and the position covered almost the same territory as the abolished position. The Organization cited Rule 64, citing that the Carrier could not use this procedure for the purpose of reducing the rate of pay or evading the application of the rules of the Agreement.

The claimant further pointed out that the change in designation because of the way the compensation is made would mean that the new position would be paid less than the previous designated position.

The Carrier failed to respond to the grievance within the time limit set out in the Agreement and, therefore, upon prompting by the Organization, the Carrier rebulletined the job on December 11, 1978. On December 22, 1978, it assigned one of the bidders to the job but in the same bulletin, it abolished the job effective midnight January 7, 1979 and established as a substitute the job of signal maintainer, in effect, doing once again what it had done before and which was the cause of the grievance.

One question raised by the Organization is that the Carrier did not comply with the specific request in the grievance which was as follows:

- "To correct this grievance, the carrier be required to rebulletin the position as a traveling signal maintainer to all signal employees on Central of Georgia Railroad and that the assignment be the same as it was on July 1, 1978. Also, that any employee affected by the rebulletin of this position be returned to their former position."

The issue of compliance then is whether by the rebulletining of the position of traveling signal maintainer as the Carrier had done previously rather than using the description as of July 1, 1978, is substantial compliance with the request by the Organization. We feel that in light of the further language used by the Organization in its grievance letter, namely:

"The new position established as signal maintainer on Bulletin S120 is almost the same territory as the position of traveling signal maintainer that was abolished on the same bulletin."

This is substantial compliance with the request of the grieving party.

The fundamental question being raised by this claim is whether the Carrier in a circumstance such as this can comply with the request of the grievant and immediately thereafter perform the same act or whether because of the decision which was made on a procedural matter can, in effect, bar any further consideration of the issue.

After examining the record, we have concluded that the Carrier satisfied the request of the grieving party when it rebulletined the job of traveling signal maintainer and appointed a person to fill this position. Any subsequent actions on the part of the Carrier with respect to this position is subject to whatever remedies are available to the Organization in its agreement with the Carrier.

We note that the subsequent activity of the Carrier in once again terminating the position of traveling signal maintainer and replacing it with a signal maintainer is subject to a subsequent grievance

not before us at this time. The issues raised in the proceedings, both substantive and procedural, will be resolved in that case.

FINDINGS: T&Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1981.