

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23319**
Docket Number SG-23287

John B. **LaRocco**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(**Illinois Central** Gulf Railroad

STATEMENT OF CLAIM: "Claim ~~of the~~ General **Committee** of the Brotherhood of
Railroad **Signalmen** on the Illinois Central Gulf Railroad:

On behalf of Mr. P. D. **Langham** account not-being awarded **Signalman**
position with **headquarters** at Paducah, Kentucky." **/Carrier** file: 135-703-168 Spl.
Case No. 342 **SIG/**

OPINION OF BOARD: Claimant, who was not awarded a shop **signalman** position at
Paducah, Kentucky, seeks **assignment** to that position and
\$3.00 per day for each day he **has** been denied the position. After an incumbent
employee vacated the shop signalman position, the Carrier solicited bids for the
vacancy in **the** September 7, 1978 bulletin. On September 11, 1978, claimant filed
a bid for the vacancy. Before any employee was awarded the shop signalman position,
the Carrier, on September 28, 1978, cancelled the previous notice. On October 19,
1978, the Carrier advertised **a new** and separate relief signalman position for the
Kentucky Division which was **eventually** awarded to another employee.

The Employees **contend** the Carrier failed to properly abolish the shop
signalman position because the Carrier failed to give affected **employees** five days
notice that the position **was eliminated as** required by Rule **18(a)**. Since claimant
was apparently the senior bidder for a position which was never abolished, the
organization asserts that claimant is entitled to the position. The organization
claims the Carrier had an improper motive for **cancelling** the position, i.e., the
Carrier **could** not persuade a favored employee to bid on the job. Also, the organi-
zation contends the new relief **signalman** position was substantially similar to the
cancelled position demonstrating **that the** Carrier was creating a new position just
to avoid awarding the shop position to **the** claimant. **lastly**, the Employees rely on
Rule **31(d) for our** authority **to order** the Carrier to pay **claimant** \$3.00 per day for
each day he has been denied the position of shop **signalman**.

The Carrier asserts that the shop position was properly abolished in
accord with the agreement. It is management's prerogative, according to the
Carrier, to determine the type and number of positions to effectuate efficient
railroad operation. In this instance, the Carrier objectively decided that a
relief signalmen position was more crucial to the efficiency of railroad service
than the shop position. **Lastly**, the Carrier points out that claimant was never
awarded the shop position because the vacancy was abolished before an award was
made to any bidder and so the **claimant** has suffered no damage under Rule 31(d).

While both parties to this dispute have raised many arguments, the resolution of this claim turns on the application of Rule 18(b) which states:

"(b) Established positions shall not be discontinued and new ones created under a different title covering relatively the **same** class of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement." (Emphasis added)

After carefully reviewing the entire record and the applicable rules, we find no evidence that the Carrier created the relief signalman position for the purpose of either reducing pay rates or evading the application of any pertinent rule. The relief position is actually better paying than the shop position which was cancelled. There is no violation of the **Rule** 18(a) notice requirements since the shop position was vacant and no **employee** had been awarded the job at the **time** the position was abolished. **Claimant** was not detrimentally affected by the abolition of a position he did not occupy. Therefore we must deny the 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

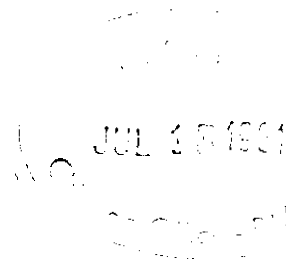
Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 19th day of **June 1981.**


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