

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

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

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

'Claim on behalf of Signalmen Arnold Grey, Jr., assigned to Central of Georgia Signal Gang for the following:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 38 Paragraph g., among others when they refused to allow Claimant to work the vacant signalman position on Central of Georgia Signal Gang, from August 22, 1988 thru September 15, 1988 and continuing thereafter until position is filled by Mr. Grey or the senior bidder.

(b) Carrier now be required to compensate Arnold Grey, Jr. the difference in pay between that of Signalman and assistant signalman or \$1.27 per hour and as of this date would be 200 hours or \$254.00 and is to be in addition to any other pay he has received or due him because Carrier held him on an assistant signalman position when there was a signalman position vacant that he could have worked on this signal gang. Carrier file SG-757. BRS Case file No. 7784-CofGa."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute deals with an alleged violation of the Agreement concerning a temporary vacancy. The cited Rules provide as follows:

"Rule 38.

(g) Employees laid off by reason of force reduction or reduced to a lower seniority class will be given opportunity to fill positions in the order of seniority. Temporary positions or vacancies of fifteen (15) working days, or less, may be filled by any available employee, but when it is known they will be of more than fifteen (15) working days duration, the senior employee entitled thereto will be given opportunity to fill the position. However, the position may be filled by the senior available employee until the senior employee desiring to fill the position reports for duty."

"Rule 47

New positions or vacancies which are permanent shall be bulletined within 30 calendar days previous to or five calendar days following the date such positions are created or vacancies occur. Temporary vacancies need not be bulletined until the expiration of thirty calendar days.

Pending bulletin and appointments, new positions or vacancies may be temporarily filled by observing seniority in accordance with the preferences of senior employees."

Claimant had been on furlough and on August 22, 1988, was recalled to Signal Gang No. 586 to fill a temporary Assistant Signalman position. That position together with temporary Signalman's position on the same gang was advertised by bulletin dated August 29, 1988. On September 9, 1988 the Assistant Signalman's position was awarded to V. Blash and the Signalman's position was awarded to T. L. Ricks, both of whom were off sick. Mr. Ricks returned to the position which he had been awarded on September 19, 1988, while Mr. Blash continued on sick leave. Claimant was awarded the temporary assistant's position, effective October 17, 1988, pursuant to a later advertisement. Carrier asserts that it did not find it necessary to fill the Signalman's position between August 29, and September 19, 1988, due to the light work load of the gang.

The Organization argues that Carrier violated the Agreement by failing to permit Claimant, a qualified Signaller, to work the Signaller's position which was vacant for more than fifteen days. Furthermore, it is alleged that he was required to perform the duties of a Signaller for the time period specified, and should have been compensated at the Signaller's rate.

As a major argument, the Carrier states that it has the right to blank a temporary vacancy. The Carrier cites Rule 47 in support of this position. Furthermore the Carrier notes that Rule 38(g) does not restrict Carrier's ability to blank a temporary vacancy. Carrier asserts that Claimant was properly compensated during the period in question and there is no contractual support for the Organization's position that the temporary vacancy had to be filled.

The crux of this dispute is whether Carrier was required by the Agreement to fill the temporary vacancy. A careful examination of the contractual language reveals that it is permissive rather than mandatory. Specifically, Rule 47 states, in part, that "...new positions or vacancies may be temporarily filled...." Similarly, the language in Rule 38(g) states twice that temporary positions may be filled. In this dispute it is quite clear that Carrier had the right to determine that the gang's work load did not justify the filling of the temporary vacancy in question. There is no Rule support for Petitioner's allegations in this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.