

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30237
Docket No. SG-29877
94-3-91-3-257

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and Northwestern Transportation Co.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen of the Chicago Northwestern Transportation Company (CNWT):

- (a) The Carrier violated the current Signalmen's Agreement especially Rule 37, when on Jan. 22, 1990, Mr. T. M. Nangle, Signalman Rank 182, requested to work Job No. 338-03, Signal Maintainer Harrison St., pending return of A. D. Swenson as advertised on bulletin #2 dated Jan. 19, 1990. The Carrier denied Mr. Nangle his request and allowed a junior employee, Mr. R. G. Carlton, Signalman Rank 217 to work this position.
- (b) The Carrier now be required to compensate Mr. T. M. Nangle \$738.10, which \$68.80 is for lost wages and \$669.30 is for additional expenses (mileage and toll charges) incurred by Mr. Nangle as a result of his being denied his request. Carrier File 79-90-14. G.C. file S-AV-23. BRS Case No. 8267-CNWT."

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 employe 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.

On or about January 8, 1990, a vacancy occurred on position #338-03 headquartered at a location identified as Harrison Street. Carrier unilaterally assigned a Signal Maintainer who was junior in seniority to Claimant to fill this vacancy pending bulletin and award.

By bulletin notice dated January 19, 1990, position #338-03 was advertised for bid. On January 22, 1990, Claimant, who was regularly assigned as a Signal Maintainer at Berkeley, Illinois, made a request to be used to fill the vacancy in question during the advertising period. His request was denied by Carrier. Subsequently, by bulletin notice dated February 5, 1990, Claimant was awarded the advertised position on the basis of his superior seniority and actually assumed the position effective February 19, 1990.

Because Claimant had been refused permission to fill the vacancy in question during the advertising period, the claim as outlined above was initiated and progressed on his behalf by the Organization alleging a violation of Rule 37(a) of the Agreement.

Rule 37(a) reads in pertinent part as follows:

"Rule 37 - BULLETINS:

- (a) Bulletins advertising new positions (which are in existence on date bulletin is issued or are to be established thereafter) and vacancies (except vacancies of thirty calendar days or less duration) will be issued on the fifth and twentieth of each calendar month and will show classification, job number, location and probably duration. Application for positions advertised in bulletins must be received on or before 12:00 noon the fifteenth day of the month for positions advertised on the fifth and on or before 12:00 noon on the thirtieth for positions advertised on the twentieth.

Assignments to positions advertised on the fifth will be shown on bulletin issued on the twentieth, and to positions advertised on the twentieth on bulletin issued on the fifth, unless such position has been abolished in the interim. Transfer will be made within five days thereafter or on date position is established or vacancy occurs, whichever is later. When any of the above dates fall on a Saturday, Sunday or holiday, the first business day thereafter will be substituted. Applicants will file their bids in duplicate with the General Chairman and the officer whose name appears on the bulletin, duplicate copies to be receipted and returned to applicant. Employees may apply for and be assigned to new positions or vacancies pending bulletin, such assignment will be as agreed to by the Manager of Signals and Local Chairman, senior man to be given preference."

From our review of the case record as developed during the on-property handling, it is abundantly clear that there was no compliance with the applicable provisions of Rule 37(a), specifically that portion of the rule which requires that "... such assignment will be as agreed to by the Manager of Signals and Local Chairman, senior man to be given preference."

In their various responses to the Claim, the Carrier candidly acknowledged that there was no agreement with the proper Local Chairman relative to the assignment to this vacancy. Carrier candidly acknowledged that there was discussion among various Supervisors relative to Claimant's apparent desire to fill this vacancy "if it would come open." However, they then proceeded to assign a junior employee to the vacancy when the position did, in fact, come open. They took this action on the basis of an alleged conversation with the Local Chairman who "apparently was not the proper Local Chairman to talk to." There is no record in the case file of anything from this "other" Local Chairman.

Even after the vacancy was bulletined to all employees, and therefore became publicly known by all as an open vacancy, Carrier continued in their violative act of not attempting to seek agreement with the appropriate Local Chairman relative to Claimant's request to be used to fill the vacancy pending assignment. Rather, Carrier contended that Claimant could not be released from his position "due to manpower requirements" even though there is no such provision or restriction to be found in the language of Rule 37(a). Carrier's defense for this action was based upon a statement dated November 12, 1990, from a Supervisor to the effect that Claimant was working on a project "which had to be done by June of 1990 per Commission Order." It is not clear from the record just how Claimant's actual assignment to the position in question effective February 19, 1990, adversely impacted on the project from which he could not be released to fill the vacancy during the advertising period. Carrier's argument in this regard is not convincing.

The language of Rule 37(a) is clear and unambiguous. It mandates that the filling of vacancies pending bulletin "will be as agreed to by the Manager of Signals and Local Chairman, senior man to be given preference." At the very least, there must be under this Rule provision an attempt made to achieve agreement with the appropriate Local Chairman. Carrier's somewhat cavalier argument that they find "no serious flaw in that the correct local chairman had apparently not been consulted . . ." reflects a serious misunderstanding of the requirement of compliance with the agreed upon provisions of a negotiated Rule. The Board finds a serious flaw in the handling of this case and has no recourse but to sustain the Claim.

AWARD

Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.