

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35710
Docket No. SG-35686
01-3-99-3-626**

The Third Division consisted of the regular members and in addition Referee Curtis Melberg when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (former Louisville & Nashville Railroad):

Grievance on behalf of all Signal employees working on the former Louisville and Nashville Railroad to require the advertisement of the Signal Maintainer position at Calhoun, Georgia, to be bulletined as a Lead Position and to remove Safety Supervisor D. D. Adams from the Assistant Foreman and Foreman class on the seniority roster, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 6, 7, 15, 16, 17, 22, 31, 32, 33, 35, 46 through 50, 66(b) and the September 23, 1986, National Seniority Retention Agreement when it awarded this position to a Safety Supervisor giving him a higher class of seniority and then returned him to his former position as Safety Supervisor. Carrier’s File No. 15 (98-339). General Chairman’s File No. 98-208-12. BRS File Case No. 10974 - L&N.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The portion of the above-quoted claim requesting that the Signal Maintainer position at Calhoun, Georgia, should be bulletined as a Lead Position was withdrawn by the Organization during the Referee Hearing before the Board.

The facts relating to the remainder of the claim, according to averments made by the Organization during the on-property appeal process, are as follows: In 1995, D. D. Adams, a Signalmen, was appointed by the Carrier to be Safety Director of Construction, a position not covered by the Scope of the parties' Agreement and thus not advertised for bid to members of the Signalmens' craft. Adams remained on the Safety Director job for over two years and during that time performed no work within the scope of the parties' Agreement. As Safety Director, Adams was allowed to claim overtime pay and other benefits not available to members of the Signalmens' craft. He was assigned a personal company vehicle to drive and was issued business cards for use in the performance of his safety duties. In 1996, pursuant to the 1986 National Seniority Retention Agreement, the Organization filed seniority retention papers with the Carrier regarding Adams' situation, indicating therein that he was considered to have been promoted to an excepted position and, upon payment of a stipulated quarterly fee to the Organization, would retain and accumulate seniority in the Signalmens' craft while working the safety position. In 1997, Adams' name appeared with the title of "System Safety" on the "CSXT - Train Control" listing of Supervisors, Training Officers, Managers and Engineers. In May 1998, while still assigned to the System Safety position, Adams bid on, and was awarded, a position of Signal Foreman, a classification covered by the parties' Agreement. The award of the Foreman's position established a seniority date for him in that classification. Adams worked the Foreman's job until July 22, 1998, when, after submitting a bid, he was awarded the Signal Maintainer's position at Calhoun, Georgia. He began working the Maintainer's job at Calhoun on July 28, 1998, and remained thereon until September 11, 1998, when he was reappointed to the system safety position. After that reappointment, he performed no work within the Scope of the parties' Agreement for over 30 days. The 1999 "CSXT - Train Control" listing of Supervisors, Training Directors, Managers and Engineers continued to designate the Claimant's title on that list as "System Safety."

The Organization contends the Carrier violated Rule 37 of the parties' Agreement when it permitted Adams, in May 1998, while assigned to the System Safety position, a position outside the scope of that Agreement, to bid on and be awarded the Signal Foreman's job, thereby allowing him to gain seniority in a higher classification in the Signalmens' craft. Rule 37 is quoted by the Organization as follows:

"RULE 37 - PROMOTION TO POSITIONS NOT COVERED BY THIS AGREEMENT

(a) Employees promoted to official positions or subordinate official positions not covered by the scope of employee agreements, and employees accepting official positions with the Brotherhood of Railroad Signalmen shall retain and continue to accumulate seniority. Within thirty days after release from such a position they may exercise displacement rights in keeping with this agreement." (Emphasis added)

Under this Rule, the Organization asserts, employees such as Adams, who are promoted to a position outside the Scope of the Signalmens' Agreement, may return to the craft only after being released from such position and then only by exercising displacement rights in keeping with the Agreement; bidding back to the craft is not permitted. Prior to the instant case, no promoted employee had been permitted to bid back to the Signalmens' craft while holding a position not covered by the Agreement, the Organization asserts. A letter addressed to the Carrier by Adams on December 21, 1998 regarding the situation in question is cited by the Organization as showing Adams himself considered the System Safety position to be a promotion. Identifying himself as "Chairman - Train Control Safety Support Team," Adams' letter reads, in part, as follows:

"... This letter will show that every time I have worked in Safety, my former job has been advertised and another employee awarded the job..."

On the property, so far as the record shows, the Carrier's response to the Organization's claim was limited to this:

"There is no merit to your appeal. Mr. Adams holds a position of Signal Maintainer at Calhoun, Georgia. He bid that position in through the bid

process. When he worked as a Safety representative, a position was advertised as Signal Maintainer #2 at Calhoun, Georgia. In fact, on each and every instance where Mr. Adams performed safety oriented work, a position was advertised to work in his absence."

Before the Board, the Carrier asserts Adams was given the opportunity in 1995, as part of a cooperative safety initiative, to work as "Safety Coordinator," which is characterized as a "temporary position," and that throughout the time in question, whenever he worked that position, he continued to hold a Signal Maintainer's position. The Carrier does not deny the Organization's allegation that the Safety Coordinator position was not advertised for bids, that Adams performed no work covered by the Scope Rule of the parties' Agreement during the time he was engaged with safety duties, or that Adams bid on and was awarded the Signal Foreman's job while working as Safety Coordinator. Neither does the Carrier challenge the Organization's assertion that Rule 37 and the practices thereunder prohibit a promoted Signaller from bidding back to the craft, but it denies Adams was ever promoted to an official or excepted position. As the Carrier views the situation, whenever Adams worked as Safety Coordinator, he worked as a Signal Maintainer on special, temporary assignment. The Carrier states that if Adams' name appeared on the list of Signal Department Supervisors cited by the Organization, it was the result of error. As proof that Adams is an active contract employee holding a Signal Maintainer's position in Calhoun, Georgia, the Carrier submits copies of what are described as "Employee Personal Information" and "Employee Inquiry" screens, which contain that information; however, both documents indicate the information is current as of certain dates in September 1999, over a year after the time in question here.

The time in question here, insofar as Rule 37 is concerned, is May 1998, when Adams bid on and was awarded the Signal Foreman's job and, as a result, obtained his contested Foreman's seniority date. It is undisputed he was working what the Carrier describes as the Safety Coordinator's position at the time and, so far as the record shows, had been so employed since 1995. "Temporary" is a relative term, but in the context of this case we do not think it appropriately defines Adams' tenure as Safety Coordinator prior to the time he bid on and was awarded the Signal Foreman's job. Accordingly, given the fact that Adams was appointed by the Carrier to the Safety Coordinator's position, it is not unreasonable, in our judgment, to conclude Adams' bid for the Foreman's position should not have been accepted by the Carrier and he, therefore, does not have a valid Foreman's seniority date. The Carrier may have chosen

- for payroll, force authorization limits or a variety of other reasons - to register Adams on its records as a Signal Maintainer, but insofar as Rule 37 is concerned, we find he worked the Safety Coordinator position as an official or subordinate official within the meaning of that Rule.

The Awards cited by the Carrier in support of the proposition that it has the right to exercise its prerogative in creating and filling temporary positions are not applicable precedent in this case. Aside from dealing with factual situations considerably different from the facts involved in the instant case, the issues addressed by those Awards are totally different from the issue presented to us here under Rule 37.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of September, 2001.