Award No. 1120
Docket No. SG-1091

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim that L. E. Goetschius be compensated for all monetary loss suffered subsequent to January 10, 1939, account not being permitted to exercise his seniority rights over a junior employe."

EMPLOYES' STATEMENT OF FACTS: "On January 7, 1939, the following notice of abolishment of positions was sent to Signal Foreman Frank Holtham, with copy to Signal Helper L. E. Goetschius:

'Paterson, N. J.
January 7, 1939.

Mr. Frank Holtham, Foreman
Paterson, N. J.

Effective Tuesday, Jan. 10th, 1939, position as signalman held by G. Eisenhauer and position of helper held by L. E. Goetschius are abolished.

These men should exercise their rights within ten days.

(Signed) J. H. Storms
Signal Supervisor

cc: G. Eisenhauer
L. Goetschius
E. J. Fisher.'

"Upon the abolishment of Mr. Goetschius's position as signal helper with headquarters at Paterson, N. J., he indicated his desire to the Supervisor of Signals, Mr. J. H. Storms, of his intention to exercise his displacement rights under Rule 30 of the current working agreement and claimed position of signal helper with headquarters at Newark, N. J., held by E. Parsloe, who was junior to Goetschius. However, Signal Supervisor Storms refused to allow Mr. Goetschius to exercise his displacement rights on the job at Newark unless he established his residence in the vicinity of the headquarters point of the position which was located at Newark, N. J.

"Rule 30 reads:

'When force is reduced, an employe of a class will have the right to displace an employe of the same class with less seniority rights. An employe so displaced having no further rights in his class may displace an employe with less seniority in the next lower class, regaining seniority rights he formerly held in that class. An employe

ployes, effective November 1, 1935, a home station is designated and part of the requirements is that employes reside at or within a reasonable distance from that home station where they can be readily available in cases of emergency. When an employe makes application for a position so advertised, or exercises displacement rights on a position which has been so advertised, it obviously requires that such an employe must meet the same conditions as to residence, etc. which the employe whom he displaces has met. It would not be consistent or reasonable to permit an employe to select a place of residence under the circumstances as they exist for Signal Department employes at a location not readily available in the territory to which he is assigned. The attention of your Board is directed to Docket No. SG-882 concerning the case on the Kent Division of the Erie Railroad in which the employes held that where the home station of a section was changed it was necessary to readvertise the job and the decision of the Third Division in that award was as follows:

'That the Carrier violated the provisions of the Agreement in failing to bulletin a change of home station as contemplated by the rules of the agreement.

AWARD

Claim sustained, without penalties or directions to rebulletin.'

"If an employe could exercise the right to determine his place of residence, the readvertising of a position when the home station was changed would be meaningless."

There is in existence an agreement between the parties bearing effective date of Nov. 1, 1935.

OPINION OF BOARD: The carrier concedes that, save for the claimant's unwillingness to comply with what the carrier deems to be the requirements of Rule 0-4 of the Operating Department, the claimant, under Rule 30 of the Agreement, would have been entitled to the position at Newark. Rule 0-4 provides that "employes are required to live wherever the business of the company demands." It does not specify that the place of residence must be at the home station; and no rule of the Agreement expressly renders these signal department employes subject to call. Compliance with that rule, then, depends primarily upon the employe's ability to satisfy the demands of his regular assignment. Since the evidence of record does not establish non-compliance with the requirements of that rule as thus construed, the failure of the carrier to assign the claimant to the position at Newark constituted a violation of Rule 30 of the Agreement. It also appears, however, that throughout the period of the existence of the position at Newark—that is, from January 10, 1939 to February 3, 1939—the claimant either worked at a wage identical with that paid at Newark, or was kept out of service because of illness. Under these circumstances no monetary loss was suffered by the claimant as a result of the carrier's violation of the Agreement, and hence the claim as submitted must be dismissed.

FINDINGS: The 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 employe involved in this dispute are respectively carrier and employe 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

The evidence of record discloses a violation of Rule 30 of the Agreement, but no monetary loss suffered by the claimant as a result of such violation.

AWARD

Claim as submitted dismissed on basis of the facts of record.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.