

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**THE ERIE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** (a) That Duane Burdic, furloughed signal helper, Susquehanna Division, should have been employed as signal helper, Marion Division, prior to the employment of new men, and that he be compensated for time lost between February 16, 1940 and April 22, 1940 because he was not so employed;

(b) That he also be compensated for the difference in rate received as signal helper and the rate that he should have been paid as an assistant signal maintainer on the Marion Division on and after November 22, 1940 had his rights been correctly recognized as set forth in claim (a).

**EMPLOYEES' STATEMENT OF FACTS:** On or about December 20, 1939, Duane Burdic, signal helper, Susquehanna Division, was laid off (furloughed) account force reduction.

On January 27, 1940 position of signal helper on the Marion Division, boarding cars, was advertised in Bulletin No. 2440. Bulletin 2446, dated February 15, 1940 reports that no bids were received for position advertised in Bulletin 2440.

On or about February 16, 1940 a new man was employed to fill the position advertised in Bulletin 2440.

On April 22, 1940 furloughed signal helper, Duane Burdic of the Susquehanna Division, was assigned to a signal helper's position at Decatur, Indiana on the Marion Division.

Bulletin 2543, dated November 8, 1940, advertised position of assistant signalman in boarding cars, Marion Division. Duane Burdic, who was then employed as a helper on that division, applied for this position and his application was rejected.

**POSITION OF EMPLOYEES:** Rule 44 of the current agreement provides that employes laid off, that is furloughed, on account of force reduction shall, if qualified, be given employment on other than their home districts in preference to employing new men. For ready reference Rule 44 is here quoted:

"Employes laid off on account of force reduction shall, if qualified, be given employment on other seniority districts in preference to employing new men and they shall continue to hold and accumulate seniority on their home districts. However, they must return to their home districts in the order of their seniority when advised by the management of employment being made available in the highest seniority class in which they hold rights or in as high a class as that in which employed or forfeit all seniority rights on their home seniority districts."

4. Burdic was not available for service on the Marion Division until he reported April 22, 1940, which is the date he established seniority under Rule 27.

**OPINION OF BOARD:** Both parties testified to their understanding that, when jobs are available on a home seniority district for which no employees with seniority rights on that district made application, such jobs are made available to employees laid off in force reductions on other districts in preference to employing new men. The method followed is for the officers on the home district to make inquiry of such officers on other districts as to the availability of furloughed or laid-off employees—the purpose being to give practical effect to the requirements of Rule 44 in affording opportunity to laid-off employees for acceptance of employment on other territories than their home seniority district in preference to employing new men.

The practical application of Rule 44 is stated in the Carrier's letter to General Chairman Wilson, dated Dec. 29, 1938, included in the file in this case, from which the following is quoted:

"It has been the practice on this district for a number of years to canvass the system for available furloughed employees to fill jobs in preference to outsiders. Any exception to this rule would be in the event of an emergency where the opening would be of short duration and there would not be time enough to canvass the system."

By Rule 44 Duane Burdic, a furloughed employee with seniority rights on the Susquehanna Division, became eligible to a position of signal helper on the Marion Division for which there were no applicants from the seniority district of the Marion Division in preference to any new employee hired to fill such position.

The record shows that a position of signal helper was opened to employees with seniority rights on the Marion Division by Bulletin 2440, January 27, 1940, and that notice of no applications from that district was posted by Bulletin 2442, February 15, 1940.

Thereafter the Carrier's officers upon two occasions prior to March 12, 1940, canvassed other seniority districts to secure furloughed employees. The record in respect to the various steps between the origin of those inquiries and the contact of Burdic or other furloughed employees is somewhat obscure and in partial conflict, as also it is in respect to the employment of new men. The employees say that "on or about February 16, 1940" and the Carrier says that "on March 12, 1940" the first new man was employed as signal helper for the positions thus made available to others than employees holding seniority rights on the Marion Division. Following a subsequent inquiry to other seniority districts Burdic was assigned to a position on the Marion Division April 22, 1940, continuing in employment on that Division until on or before his return to the Susquehanna Division, April 14, 1941.

The assignment of a new employee instead of an available furloughed employee, whether on March 12, 1940, as stated by the Carrier or on other indefinite date about February 16, 1940, as stated by the employees, is evidence of non-compliance with the requirement of Rule 44 for which the claimant in this case was not responsible unless there was dereliction on the part of himself or representative in respect to the normal procedure followed in making available to furloughed employees on other seniority districts positions for which there are no applicants on the home districts.

It is evident that unless Burdic was derelict in the usual procedure followed in giving application to Rule 44 he was entitled to assignment to the involved position on the date between February 15, 1940, and March 13, 1940, that a new employee was assigned to it—such date to be determined by further investigation by the parties—or, in the event that first employment of a new employee was on or shortly after the date, February 15, 1940,

of the posting of the notice that no applications were received from the employes on the Marion Division, he, Burdic, was entitled to the assignment thereafter upon such date as under normal procedure it would have been practical for him to have begun work on the Marion Division position.

The record is confusing and inadequate in respect to Claim (b) in that facts, relating to seniority rights accorded to the Claimant during periods of his employment on districts other than his own district on several previous occasions as shown by abstract of his service record in the file, are not shown as also are they not clearly evidenced as to the period of his employment on the Marion Division included by the instant claim. These omissions require the development of more complete data in respect thereto and it is suggested that, upon the development of such information by the parties, they will be in a position to dispose of Claim (b) in accordance with their mutual understanding of the applicable rules. Claim (b) will be remanded to the parties for further handling in accordance with this opinion.

**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, find 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

If it is found that the usual procedure followed in giving application to Rule 44 was not afforded Burdic in this case, he was entitled to assignment to a position of signal helper on the Marion Division as of the date indicated by the Opinion of Board and to compensation for wage loss for the difference between that which he would have earned at the signal helper's rate and that which he otherwise earned during the period between the date of the first employment of a new employe on or after February 15, 1940, as may be determined by the parties in accord with the Opinion of Board and the date of April 22, 1940, to which extent Claim (a) is sustained; Claim (b) will be remanded in accordance with the provisions of above Opinion.

#### AWARD

Claim (a) is sustained to the extent indicated in the Opinion and Findings; Claim (b) is remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1942.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**INTERPRETATION NO. 1 TO AWARD NO. 1716**  
**DOCKET SG-1825**

**NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen of America**

**NAME OF CARRIER: The Erie Railroad Company**

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The statements of the parties made incident and subsequent to the request for interpretation of Award 1716 have added nothing of substance to the record as giving application to the Award in line primarily with its Findings and the Opinion upon which the Findings were based. These statements disclose failure of the parties, after receipt of the Award, to come to a mutual understanding consistent with the Findings and the outlined progression in the Opinion precedent thereto which should have led and should yet lead to a practical application of the Award.

Compliance with the Opinion and Findings of the Award, which of themselves are clear and unambiguous, supplemented by cooperation of the parties in determination and agreement upon the facts obscure in the record, would have enabled and would yet enable the parties to dispose of this dispute.

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

**ATTEST: H. A. Johnson**  
**Secretary**

**Dated at Chicago, Illinois, this 25th day of May, 1943.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**INTERPRETATION NO. 2 TO AWARD NO. 1716**  
**DOCKET SG-1825**

**NAME OF ORGANIZATION:** Brotherhood of Railroad Signalmen of America

**NAME OF CARRIER:** The Erie Railroad Company

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following second interpretation is made:

The difficulty in the instant dispute is the interpretation to be given to that part of the findings in Award 1716 reading as follows: "If it is found that the usual procedure followed in giving application to Rule 44 was not afforded Burdic in this case, he was entitled to assignment to a position of signal helper on the Marion Division \* \* \*." The Carrier contends that the usual procedure was followed in making the work available to Burdic and the Employees contend that it was not.

It is not disputed that when jobs are available in a seniority district for which no employees with seniority rights apply, such jobs are made available to furloughed men on other districts in preference to new men. See Rule 44, Current Agreement. It appears that vacancies existed on the Marion Division with no employees with seniority rights to fill them. Other districts were thereupon canvassed, and no furloughed employees being reported, new men were assigned. The Carrier contends that the rule contemplates that furloughed employees making application for employment on other seniority districts to their supervising officers would be afforded this opportunity but did not intend that seniority rights existed with reference to such work. The Employees contend that it is the duty of the Carrier under this rule to notify furloughed employees of such work and that no affirmative action by such furloughed employee was necessary in establishing his right to it.

Rule 44 does not set forth any procedure to be followed in making such work available to employees. The opinion and findings demonstrate the inability of the Board to determine what the practice had been in the past. There are isolated instances cited where the employee was solicited, others where the employee was given notice and others where the employee applied for the work. We have searched the record diligently for convincing proof of the general practice employed without success. Clearly, if the practice previously followed required the carrier to notify furloughed employees of the existence of this work in another seniority district, the Carrier failed in its duty and the claim should be sustained. If, on the other hand, the previous practice required affirmative action on the part of the employee indicating his desire or willingness to accept work in another seniority district, then the claim should be denied inasmuch as Burdic took no such action. The record has been clarified to the extent that Burdic was entitled to work, if at all, from March 12, 1940, to April 22, 1940, as to that part of the claim designated as (a). In case of the failure of the parties to adjust this claim on the property, the evidence pertaining to the previous practice as hereinbefore discussed will be very pertinent in arriving at a correct result by this Board.

The part of the award pertaining to part (b) of the claim was remanded for further handling. This part of the claim is plain and unambiguous and is not therefore subject to interpretation.

Referee Edward F. Carter participated with the division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1944.