

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: 1. Request of H. A. Denny for restoration to a position of helper T. & S., Mansfield, Ohio, and payment for all time lost from April 16, 1938, to the date restored to such position.

2. Request of T. E. Schwartzkopf, who displaced H. A. Denny on April 16, 1938, for restoration to the position he occupied prior thereto as maintainer, T. & S. on Section No. 26 and for compensation for any wage loss.

3. Similar requests in cases of Grant Ward and L. Zimmerman, maintainers, T. & S.

EMPLOYEES' STATEMENT OF FACTS: On April 15, 1938, Mr. H. A. Denny was the regular occupant of position of helper, T. & S., Mansfield, Ohio. On April 16, 1938 he was displaced from this position by a senior employe, T. E. Schwartzkopf. There being no other position available to H. A. Denny on the basis of seniority, he was furloughed. This exercise of seniority by T. E. Schwartzkopf was due to his having been displaced on April 16, 1938 by a senior employe, Grant Ward, from a position of maintainer, T. & S., on Section No. 26, first trick, headquarters Toledo Junction, Ohio.

Prior to April 16, 1938, Grant Ward had been the maintainer, T. & S., on Section 22, first trick, headquarters Millbrook, Ohio. Effective April 16, 1938, he was displaced from this position by a senior employe, L. Zimmerman.

Prior to April 16, 1938, L. Zimmerman was the maintainer, T. & S., on first trick on Section No. 21, extending from Signal 125.0 to Signal 137.3. Effective April 16, 1938, he was displaced from this position by a senior employe, W. Q. Miller.

Prior to April 16, 1938 W. Q. Miller was the foreman, T. & S., at Mansfield, Ohio. Effective April 16, 1938, he was removed from this position by the Management for the purpose of appointing F. J. Baumann to it; and on that date such position was filled by appointment of F. J. Baumann who, prior to that date, had been Assistant Supervisor, T. & S., Eastern Division. Effective April 16, 1938, the position of Assistant Supervisor T. & S., Eastern Division, was abolished. Baumann held no seniority rights whatever on the Eastern Division. He held seniority and displacement rights on the New York Division, an entirely separate seniority district.

POSITION OF EMPLOYEES: The position of Assistant Supervisor T. & S., Eastern Division, held by F. J. Baumann was abolished by the carrier effective April 16, 1938. In its desire to provide another position for Mr. Baumann on

men's Agreement. The matter is at the present time before the National Mediation Board, the services of that body having been invoked by the Brotherhood. It is evident that the Brotherhood is attempting by means of this claim to accomplish the same purpose it is striving to accomplish through negotiation, i. e., have Foremen and Assistant Foremen positions filled in accordance with seniority. The Carrier respectfully urges that unless and until the Brotherhood is successful in its negotiations, claims such as the instant one must of necessity be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties hereto. To grant the claim of the employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the claims herein are invalid, first, because the propriety of Miller's removal from the Foreman position is governed by the Foremen's and Assistant Foremen's Agreement, to which the Claimants are not subject (and in any event because, under the Foremen's Agreement, the Carrier had the right to remove him at will), and second, because Miller's exercise of seniority rights to displace Zimmerman was strictly in accordance with the terms of the Signalmen's Agreement. Accordingly the Claimants are entitled neither to be restored to their former positions nor to be reimbursed for any losses they suffered by reason of their displacements.

In view of the foregoing it is respectfully submitted that the claims must be dismissed.

OPINION OF BOARD: This entire dispute centers around Miller's displacement in the foreman's position. Miller's right to exercise his seniority in the manner in which he did following his displacement is not questioned, except that it is contended Miller's displacement as foreman was improper and that this improper displacement caused Miller to start the bumping process upon which this claim is predicated. Significant is the fact that Miller makes no claim under the Foremen's Agreement or any other agreement.

We are convinced that the rights of these claimants must be determined under the agreement they have with the Carrier and cannot be determined by some agreement under which they hold no rights. Conceding that Rules 4-A-1 and 4-A-2 of the Foremen's Agreement give Miller, who was covered by such agreement as foreman, the right to protest his displacement as foreman, nevertheless, such right under the rule would be confined to Miller. Miller makes no claim under either Rule 4-A-1 or 4-A-2 that he was "unjustly treated," and there is nothing in that rule which permits these claimants to so contend.

It is apparently claimant's contention that a foreman on one division should not be displaced by a person holding no rights on that division, thereby causing the displaced foreman to exercise his seniority rights as permitted under the express provisions of Rule 3-I-1 of the Signalmen's Agreement, and further that a foreman should be appointed on the basis of seniority on the division where he holds seniority rights. These contentions are no doubt based

on sound practice from the viewpoint of Claimants; the difficulty is that nothing has been found in the agreement to support them. We think it clear that the Signalmen's agreement does not cover the position of foreman, that position is specifically covered by a separate agreement, and by the very terms of Article I of the Signalmen's Agreement is excluded therefrom. This, in itself, we believe sufficient to deny these claimants the right to question the removal or appointment of a foreman, especially in the absence of any protest by the foreman. However, looking to the Foreman's Agreement, we find nothing to support Claimant's contention. In fact, Rule 2-B-1 of that Agreement definitely provides that seniority may be exercised only when "reduced," clearly implying that seniority is not provided for foremen's positions. The Agreement failing to provide seniority for foremen's positions, this Board should not by an award giving effect to Claimant's contentions, step in and write any such rule into the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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

That there is shown no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1942.