

Award No. 1793

Docket No. SG-1790

**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: Claim that T. R. McLhinney should have been assigned the position of T. & S. maintainer on Section No. 11, C. & P. D. Branch, headquarters Holtwood, Pa., advertised on Bulletin No. 277, dated August 31, 1938, and awarded to G. H. Anderson, a junior employe, on September 19, 1938. Also claim for compensation for McLhinney equal to the amount earned by Anderson from September 20 to October 22, 1938, inclusive.

EMPLOYEES' STATEMENT OF FACTS: On August 31, 1938, the carrier posted advertisement No. 277, which re-advertised position of maintainer T. & S., headquarters Holtwood, Pa. territory Section No. 11, from Otsego Street, Perryville, Maryland to the division line east of Creswell. The position was re-advertised account of a change in the tour of duty from 8:00 A. M.—5:00 P. M. with one hour for lunch, to 7:00 A. M.—4:00 P. M. with one hour for lunch. Holtwood is located about 25 miles west of Perryville and the division line east of Creswell is about 13 miles west of Holtwood.

Included in the advertisement was a notation which read:

"Applicants for this position will state in their application where they propose to reside."

The position at the time it was advertised was occupied by G. H. Anderson. On the following day, September 1, 1938, Anderson was displaced by T. R. McLhinney in the exercise of his seniority rights. This resulted in Anderson being placed on furlough. At the time McLhinney displaced Anderson, the carrier did not object to his place of residence and he filled the position without objection until the time it was awarded to Anderson.

McLhinney bid on this position as per advertisement No. 277 and stated he would reside at Perryville, his residence being within several hundred feet of the eastern end of the section referred to. This location not being satisfactory to the carrier's division officials, McLhinney was refused the position and Anderson, who was junior to McLhinney, was recalled from furlough and the position awarded to him. This resulted in McLhinney being furloughed. While Anderson occupied the position, he resided at McCalls Ferry, about .7 of a mile from Holtwood, the headquarters of the position.

McLhinney protested the awarding of this position to Anderson, at which time the carrier informed him that the requirements of the job made it necessary for the maintainer to locate his residence somewhere in the western section between Creswell and Midway. On October 23, 1938, Mr. Anderson was displaced by a senior employe who established his residence in the western section of the territory as requested by the carrier.

Page 271, it was held that a decision of such a System or Joint Board made in a "substantially identical case" controlled the decision of the National Board. The opinion at pages 273 and 274 contains the following language:

"Since the carrier had equal representation on that Board and joined in these decisions, we think the decisions must be given weight as indicating the common understanding of the parties in situations such as that now before our Board. Since our function is to apply the agreement between the parties, the interpretations which they themselves, through their own Board, have placed upon it should not lightly be disregarded by our Board * * *."

"Whatever weight might be given to these two cases, we think the decisions of the Telegraphers' Adjustment Board and of this Board, heretofore cited, should be controlling."

CONCLUSION

Therefore, the Carrier submits that the Claimant McLhinney is not entitled to compensation for the days claimed while furloughed from active service, and that the use of Anderson to perform the T. & S. Maintainer service referred to was not in violation of the agreement between the Carrier and the employees represented by the Brotherhood of Railroad Signalmen of America; and respectfully requests your Honorable Board to dismiss the claim of the employee in this matter.

OPINION OF BOARD: Claimant is an employee subject to call within the meaning of Rule 5-A-1.

The first question presented by the record is whether Rule 5-A-1 gives to the Carrier any authority to require that an employee must reside at a point where he can respond promptly when called in case of emergency.

Rule 5-A-1 is a revision of a similar rule promulgated during Federal Control. The rule was first revised effective Sept. 1, 1921, and again effective Jan. 1, 1937. We can see no distinction between the original of the rule and the revisions, so far as the rule relates to the question presented by this record. Construing the rule as revised in 1921, the Pennsylvania Railroad Telegraph and Signal Department Reviewing Committee in its Decision 80 said: "It is recognized that the Management, having the responsibility of operation, have the administrative right which they have exercised, of stipulating the limits of the territory within which a signal maintainer must live before being permitted to work on a particular assignment." The rule as it now appears and as revised in 1937 was again interpreted by a decision, dated June 10, 1938, rendered by a Board of Arbitration appointed by The Pennsylvania Railroad—Long Island Railroad Telegraph and Signal System Board of Adjustment. This decision is set forth in the record and need not be again set forth at length in this Opinion.

In submitting the question to arbitration, the Adjustment Board declared, "the decision of the Arbitration Board when made, shall be a conclusive adjustment of the subject matter involved." Claimant contends that the Adjustment Board never adopted the Arbitration report and for that reason the decision is not binding within the meaning of Award 233. However, it appears that a motion not to promulgate the decision of the Arbitration Board was ruled out of order. The decision of the Board of Arbitration, therefore, remains as does also the motion making such decision final. Should it be held that the decision of the Arbitration Board had no binding effect, there would still remain Decision 80, which is more adverse to Claimant's contentions standing alone, than it is when considered with Docket 224 and the decision of the Arbitration Board.

Construing these two decisions together, as we think we must, we conclude that under these decisions made on the property the Carrier may not arbitrarily require that a T. & S. maintainer live within the limits of his

assigned territory, but that the Carrier has some discretion in determining whether by reason of the residence of a maintainer, he is available for a call within the meaning of Rule 5-A-1.

This leaves the question of whether the record shows that Carrier abused its discretion or acted arbitrarily or unreasonably in deciding that Claimant was not available for call while living at Perryville. We do not deem it necessary to restate in this Opinion the facts appearing in the record; sufficient to say is, that it is not the function of this Board to attempt to place itself in the position of the Carrier and determine what it would do if acting in the first instance, but this Board's only function in this respect is to review the facts of record and determine whether there is any reasonable basis for the acts of the Carrier. After giving the facts of record what we deem careful consideration, we can come to no conclusion other than that these facts disclose a reasonable basis for the Carrier's acts. We are unable to say that the Carrier acted either arbitrarily or without reason.

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 Employee involved in this dispute are respectively Carrier and Employee 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 the record discloses 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.