Award No. 2271
Docket No. SG-2326

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: (a) That C. W. Fleming, foreman, shall be paid the difference between what he would have earned at foreman's salary of $255.50 per month had he been assigned to such position at Washington, Missouri, in accordance with his seniority, for the period February 1, 1942, to March 15, 1942, and the amount he actually received for that same period.

(b) That C. W. Fleming shall be paid $22.00 for expenses during ten days of the period held away from foreman's position at Washington, Missouri.

EMPLOYES' STATEMENT OF FACTS: January 26, 1942, Foreman Waldron, assigned to a monthly salaried position at the rate of $255.50 per month, was dismissed by the carrier and his position immediately assigned to F. E. Shaver. Under date of February 14, 1942, Bulletin No. 34 advertised permanent position of foreman at Washington, Missouri as open for bid. Foreman Waldron was reinstated by the carrier and this fact advertised in same document carrying Bulletins No. 35 and No. 36, dated March 12, 1942. Mr. Waldron resumed work on foreman's position March 15, 1942.

Claimant C. W. Fleming is senior to F. E. Shaver in the foreman's class.

There is an agreement between the parties to this dispute, effective September 1, 1939.

Rule 10 (b) of this agreement reads as follows:

> "In transferring employes to fill vacancies or new positions in their own class, seniority shall govern. Employes transferred in the exercise of their seniority rights in their own class and failing to qualify within thirty (30) days may exercise their seniority rights only on new positions or vacancies."

Rule 3 (r-3) reads as follows:

> "Actual necessary expenses will be allowed when away from headquarters."

Rule 3 (u) reads as follows:

> "An employe when sent from home station to fill a temporary vacancy for one (1) day will be paid in accordance with Rule 3-(o); if for more than one (1) day, he will be paid in accordance with Rule 3-(r-1), except that expenses will not be allowed under this rule for a longer period than ten (10) days. While filling such vacancy he will be paid for the hours worked at the established rate for the position, but at not less than his regular rate."

in the exercise of their seniority rights in their own class and failing to qualify within thirty (30) days may exercise their seniority rights only on new positions or vacancies."

The Management has denied the Employes' contentions on the basis that this rule has no application to the instant case. This rule—10-(b)—is a part only of the promotion rule No. 10. Rule 10 is made up of four separate and distinct sections, reading as follows:

"Promotion: Rule 10. (a) Promotions to positions within the scope of this agreement shall be based on ability and seniority; ability being sufficient, seniority shall govern.

(b) In transferring employes to fill vacancies or new positions in their own class, seniority shall govern. Employes transferred in the exercise of their seniority rights in their own class and failing to qualify within thirty (30) days may exercise their seniority rights only on new positions or vacancies.

(c) Employes are entitled to promotion to positions covered by this agreement only on the district over which their seniority prevails except that employes of other districts will be given preference over new men.

(d) An employe accepting promotion to positions coming within the scope of this agreement and failing to qualify within thirty (30) days shall be permitted to return to his former position except as covered by Rule 2-(b)."

The temporary vacancy of signal foreman at Washington did not involve any promotions.

The practice of filling temporary vacancies under rules of the agreement are to first give consideration to the senior laid off employes in the classification in which the vacancy occurred. If there be none, then promotions are made from the lesser ranks. In other words, as in this instance, there was a temporary vacancy of a foreman to fill. If there were no available laid off foremen, or demoted foremen working in lower ranks, then this would involve the assignment of an employe from a lesser rank. The transfer from the lesser rank to the higher rank would be made on the basis of ability and seniority; where ability was sufficient seniority would govern.

To follow the contentions of the Employes would involve an immediate contact being made of all foremen on the seniority roster to develop whether or not any of them were desirous of filling a temporary vacancy of a foreman. This would be an absolute unworkable proposition. The rules were not so intended when written, nor have they been so applied. They have been applied just exactly as was done in this instance, that is, when the temporary vacancy of foreman developed it was assigned to the senior demoted foreman and he would have been permitted to occupy the position until it was bid in and an assignment made under the rules of the agreement.

There is filed hereto as a part of this submission, marked Carrier's Exhibit "A," the 1942 seniority roster of all employes coming within the rules of the agreement dated September 1, 1939.

OPINION OF BOARD: This claim is on behalf of C. W. Fleming, a foreman, who requested transfer to fill a temporary vacancy in a higher rated position. The vacancy was filled by the transfer of a foreman who was junior to the claimant, but who was not then employed.

The claim presents the question of the proper interpretation of Rule 10 (b) of the Agreement which provides that "In transferring employes to fill vacancies or new positions in their own class, seniority shall govern."

The Employes contend that this rule means that the Carrier must transfer the senior employe in that class to fill any temporary vacancy or new

position if the employe requests such transfer. If the Rule were read literally without any reference to the other rules of the Agreement, no request would be necessary. The Carrier would be compelled to search the seniority roster of all employes in that class and transfer the senior employe. The process would then have to be repeated to fill the vacancy caused by the transfer of the senior employe and so on down the line. It is conceivable that such an interpretation, if applied to filling a vacancy of the highest rated position in the class might involve a transfer of every employe in the class. Such action would cause such confusion that it might well result in serious interruption of the service.

The rules provide, Rule 11 (a), for the bulletining of new positions or vacancies which are expected to be of a certain duration. This gives all an opportunity to bid on the position and to exercise their seniority.

Rule 11 (b-3) provides that, "New positions or vacancies may be filled temporarily pending permanent appointment."

Rule 6 (f-3) provides that, "When filling temporary positions, if the senior laid off employe fails to respond or in the case of an emergency, the senior available laid off employe may be used until the senior laid off employe reports."

When interpreting a rule we must, if possible, arrive at a workable result. If what the rule seems to say would give an unworkable result we may have an ambiguity, a doubt, in a rule which might otherwise appear so clear as not to admit of interpretation. In such a case an examination of the other rules of the agreement may prove that the parties did not intend the literal and absolute meaning of words used in one rule.

We have such a case presented by this Docket. An examination of the rest of the Agreement, and particularly Rule 6 (f-3), convinces us that the parties in Rule 10 (b) of this Agreement were thinking of laid off employes and were not intending by the use of the phrase "Seniority shall govern" the absolute meaning which those words considered by themselves would seem to imply.

Awards Nos. 132 and 495 cited by the Employes involved only unassigned employes. Awards Nos. 1058 and 1114 and Decision No. 4079 of the United States Railroad Labor Board were cases where both employes in question were working at the time the temporary vacancy occurred. None of the cases cited involved the use of an unassigned employe who was junior to an assigned employe.

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

That the Record does not disclose a violation of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.