

Award No. 2372
Docket No. SG-2223

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of C. B. Waring for expense allowance, under Rule 19 of the current Agreement covering Signal Department employes, while occupying position of signalman following assignment to position as assistant maintainer at Yakima by Bulletin No. 267, March 18, 1942.

JOINT STATEMENT OF FACTS: Mr. C. B. Waring's seniority date as an assistant signalman or assistant maintainer is June 16, 1937. His seniority date as signalman or signal maintainer is July 26, 1937.

On February 27, 1939 Bulletin No. 228 was issued calling for bids on temporary positions for four signalmen and four assistant signalmen to cover extra work at various points during the season on the western district. These positions to be established as required.

On March 6, 1939, notice was issued naming C. B. Waring as a senior applicant for one of the positions as signalman, and accordingly became assigned.

On November 27 and December 4, 1939, the following bulletin and notice were posted:

"NORTHERN PACIFIC RAILWAY COMPANY
Bulletin No. 232

ALL CONCERNED:

Tacoma, Wash., Nov. 27, 1939

Account expiration of 9 month period, the following temporary positions are now made permanent.

4 signalmen
4 asst. signalmen

Bids will be received in this office to and including December 2, 1939.

T. C. Hansen,
Supvr. of Signals

cc SWL, SSS, HMW, Local Chairman."

"Tacoma, December 4, 1939
0-8-1

ALL CONCERNED:

Assignments on Employment Bulletin No. 232 dated November 27, 1939 are as follows:

So far, we have developed that Mr. Waring held a seniority date as signalman and signal maintainer as of July 26, 1937; that this date was in conformity with the agreement between the Railway Company and the Signalmen's Organization dated January 17, 1936; that on March 11, 1942 when bulletin No. 266 was issued he was by virtue of his seniority holding a position of signalman, this being his assignment in conformity with schedule rules. This leaves for consideration the question of application of Rule 19 of the Signalmen's Agreement, which provides that employes sent away from home station to perform work will be allowed necessary expenses except when sent to temporarily relieve an employe of a higher class.

Mr. Waring is basing his claim on a contention that his regular assignment was that of assistant signal maintainer at Yakima and that because he was working as a signalman he is entitled to expenses under the provisions of Rule 19 while working as a signalman. This position is obviously not tenable for the reason that Mr. Waring's regular assignment which he was holding on the basis of his seniority was that of a signalman and under the agreed to interpretations of the rules it would have been improper to have permitted Mr. Waring to take service as an assistant signal maintainer when his seniority entitled him to work as a signalman or a signal maintainer. It cannot, therefore, be said that Mr. Waring is, under the provisions of Rule 19, entitled to expenses while working as a signalman because when so working he was properly performing service in conformity with his seniority under the provisions of the agreement. To say that Mr. Waring's assignment was that of an assistant signal maintainer at Yakima and that he was temporarily working as a signalman is in conflict with the provisions of schedule rules and not in conformity with the facts.

Assuming, however, purely for the sake of argument that Mr. Waring was assigned to the position of assistant signal maintainer at Yakima and was temporarily relieving on a signalman's position, in that case he would not be entitled to expenses under the provisions of Rule 19 as on the employes' own line of argument he would then be temporarily relieving an employe in a higher class. In other words, following the employes' argument to its logical conclusion, if Mr. Waring's assignment was that of assistant signal maintainer at Yakima he must necessarily have been temporarily used in the position of Signalman after he had been assigned to the assistant signal maintainer's position at Yakima, in which event he would not be entitled to expenses under the provisions of Rule 19 as he would then be temporarily filling a position in a higher class. On the other hand, if Mr. Waring's proper assignment was that of signalman, and it is the Carrier's position for the reasons hereinabove stated that such was the case, then he would not be entitled to expenses while occupying that regular assignment. In any view of the case, therefore, i. e., whether Mr. Waring was temporarily filling a position in a higher class or was filling the position of a signalman on the basis of his seniority, he would not be entitled to expenses under the provisions of Rule 19.

OPINION OF BOARD: Rule 19 of the Agreement provides:

"Employes sent away from home station to perform work will be allowed necessary expenses, except when sent to temporarily relieve an employe of a higher class."

The facts disclose that while holding a temporary position as signalman, C. B. Waring bid in and was assigned to the permanent position of Assistant Signal Maintainer at Yakima. However, Mr. Waring was retained on his temporary position as signalman against his request to be transferred to the Yakima position, and has filed this claim under Rule 19, for expenses while held to his position as signalman.

The reason advanced by the Carrier for not transferring Mr. Waring to Yakima is that the assignment to Yakima was made for the purpose of providing Mr. Waring with a position upon the completion of his temporary work

as a Signalman. But there is nothing in the rules that authorizes the Carrier to indefinitely delay a transfer after making an assignment to a position. Implicit in the rules, especially Rule 42, is the requirement that transfer shall be made within a reasonable time after assignment. Award 2263. We agree with the employees that this requirement cannot be set aside by the Carrier against the expressed desire of the employee who has received the assignment.

The Carrier contends that Mr. Waring, having acquired seniority as a Signalman, and holding a position of Signalman even though such position was only temporary, could not exercise his seniority as an Assistant Signal Maintainer. This contention is quite effectively refuted by the fact that Carrier assigned Mr. Waring to the position of Assistant Signal Maintainer with full knowledge of all the facts. The same reply is applicable to Carrier's contention regarding Rule 3 (c).

The Carrier further contends that Mr. Waring while filling the position of Signalman, after being assigned to Yakima, was within the meaning of that part of Rule 19 which denies expenses to an employee "when sent to temporarily relieve an employee of a higher class." The whole record refutes this contention. Mr. Waring was relieving no one; he was simply performing work other than the work at Yakima, to which he had been assigned.

We are of the opinion that after Mr. Waring was assigned to Yakima this became his home station within the meaning of Rule 19. When the Carrier, contrary to Mr. Waring's request, required that he remain at the signalman's work he was entitled to his necessary expenses as provided in the Rule.

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 Claimant is entitled to his necessary expense incurred while held in the Signalman's position after assignment to Yakima.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1943.