

Award No. 2535

Docket No. SG-2570

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of O. W. Seyferth for away-from-home expenses (as set forth below) under the provisions of Rule 17, Article II, of the current Signalmen's Agreement while filling position of Signal Foreman on installation of flashing light signals and short arm automatic gates at Milan, Indiana, July 16, 1942 to September 17, 1942 inclusive:

Month of July,	14	working days,	total expense	\$23.25
" " August,	25	" " " "	"	48.05
" " September,	14	" " " "	"	26.45

EMPLOYES' STATEMENT OF FACTS: East End St. Louis seniority district Bulletin No. 86, dated July 3, 1942 read as follows:

"Bids will be received in this office up to and including July 13th, 1942, for the following positions, with headquarters at Milan, Indiana, in connection with the installation of flashing light signals and short arm automatic gates: 1 Gang Foreman, 1 Signalman, 1 Asst. Signalman, 2 Signal Helpers. No camp cars will be furnished. Rates of pay in accordance with Signalmen's Agreement."

Bids as follows were received:

Name	Position bid on and choice			
	Foreman	Signalman	Asst. Sig.	Helper
H. F. Morris			1st	2nd
Wilmer Woolf				1st
C. B. Flesher	2nd	1st		
H. B. Henry		1st		
F. L. Davidson				1st
C. E. Brooks	1st	2nd		

East End St. Louis seniority district Bulletin No. 88, dated July 14th, 1942, read as follows:

"Referring to Bulletin No. 86, dated July 3rd, 1942, advertising positions with headquarters at Milan, Indiana, in connection with installing flashing light signals and short arm automatic gates. The following qualified applicants have been appointed: Foreman, O. W. Seyferth; Signalman, C. B. Flesher; Asst. Signalman, H. F. Morris; Signal Helpers, Wilmer Woolf, F. L. Davidson. Effective July 16, 1942. Please report for duty at Milan, Ind., Thursday morning July 16, 1942."

Seyferth held a regular position as Signal Maintainer with established headquarters at Delhi, Ohio, which he acquired under the provision of the agreement rules.

those not able to meet the necessary qualifications is indicated in the same rule—for the next sentence shows what is to be done about extending the bulletin if **there are no qualified men** on the district.

Now, even the Committee must admit from the records there were no qualified men, other than Seyferth on the district possessing the necessary qualifications for the position as Foreman, hence Seyferth, under the same Rule 48 (a) was **required to accept the position**.

Prior to 1930, there was no such clause in the agreement as to requiring a man to accept a position, but a general discussion was had on the subject during the preparation of the Agreement at that time and the Carrier desired to clear up any complications as to the selection of a man to protect the service and the only difference was as to whether the senior or junior qualified employee would be required to accept the position and the Committee designated the junior qualified man, which was agreeable to the Carrier, and thus placed in Rule 48 (a) as it now stands. Of course, the Committee agreed to this Rule 48 (a) and with full knowledge of its effect, wrote it into the agreement of July 28, 1939. Clearly, the intent and purpose of **requiring the junior qualified man to accept a position** in order to protect the service was the desire of the Committee, and clearly should be now. From the facts as shown there was no qualified man who applied on the district for the position of foreman and consequently Seyferth being the only qualified man **he was required to accept the position**. There was no provision for expenses as it was clearly not an oversight, since it was not ever contemplated in the long experience, both before and after this agreement of 1939, of which Rule 48 (a) is part, that when the qualified man was required to accept a position he would get any expense allowance. The great care taken by the Committee generally in safeguarding the rights of its members would surely have provided for an expense account when a qualified man was required to accept a position, if there had been any justice, or fair play in the matter. The fact that expense accounts are not mentioned at all in cases where a qualified man is required to accept a position, Rule 48 (a) speaks for itself. At the time of the negotiation this matter could have been discussed, and yet, no mention is made of expense accounts for the qualified man required to accept a position. The claim, therefore, now made to add an expense account to Rule 48 (a) would clearly be beyond the jurisdiction of the Adjustment Board, but would be among the functions of the Mediation Board under Section 5 first (a) of the Railway Labor Act, which relates to changes in rules, or working conditions.

Now since the Management judged (Rule 45) as to ability, merit and seniority, and the new position was bulletined (Rule 48 (a)) and no applications were received for the position of foreman by qualified men (Rule 48 (a)—Rule 45) the **junior qualified man was required** to accept the position, which he did, and that man was the claimant Seyferth. Rule 48 (a) says nothing about an expense account, and the erroneous statement by the Committee in its contention dated November 3, 1942 that Seyferth "**retained his regular assignment**" (Emphasis supplied) is not borne out by the facts, since there is no dispute that he was the qualified man required to accept the position as foreman which he did accept. The effort to secure an expense account under an entirely different statement of facts clearly is without merit, for it is obvious that the qualified man Seyferth was required to accept the position, which Seyferth being the only qualified man, did accept, in Milan, Indiana, and there worked about two months so he could not have retained as the Committee states, **his regular assignment in Delhi, Ohio**, and now as a result, of his work in Milan, Indiana, since no provision was made in Rule 48 (a) or elsewhere, for the payment of an expense account, covering the period of almost two months, the claim should be denied.

OPINION OF BOARD: By Bulletin No. 86 the carrier called for bids upon positions in an installation gang "with headquarters at Milan, Indiana." Among others the bulletin called for bids on one position of "Gang Foreman."

Two bids were made for the position. The carrier, considering neither applicant qualified for the position, assigned claimant to it under the provisions of Rule 48 (a) which provides that "if no applications are received, the junior qualified man will be required to accept the position." (Emphasis added.)

Claimant was the junior qualified man in the seniority district in which Milan is located. He held a regular position as Signal Maintainer with established headquarters at Delhi, Ohio, to which he returned upon completion of his job as foreman of the installation gang at Milan. He filed a claim with the carrier for living expenses incurred while he was acting as foreman of the installation gang. The claim is predicated on Rule 17 which provides:

"Hourly rated employees sent from home station to perform work and who do not return to home station daily, will be paid for traveling or waiting. . . . Necessary expenses will be allowed at the point to which sent if meals and lodging are not provided by the railroad or boarding cars to which employees are assigned, are not available." (Emphasis added.)

The carrier rejected the claim, invoking Rule 48 (a) in justification of its action. It contends that, since Bulletin 86 established that gang's headquarters at Milan that that became claimant's home station during the period he was foreman of the gang.

Both parties, in their arguments, have covered a wide field in attempting to construe Rule 48 (a) so as to support their respective positions. Upon the facts of this record, we may concede that, in requiring claimant to accept the position of foreman of the gang at Milan, the carrier was acting within its rights under Rule 48 (a). But he did not accept the position voluntarily. He did not bid for it. In fact he protested taking it. And when the job was finished he returned to his established position at Delhi. We think that, under the facts Delhi was at all times his "home station" in contemplation of Rule 17. He was "sent from his home station" to "perform work" at Milan. He did "not return to home station daily." "Meals and lodging" were "not provided by the railroad," nor were "boarding cars . . . available."

Clearly the claim falls within the express provisions of Rule 17.

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 the carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.