

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE & OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: (a) That the carrier improperly bulletined position of Signal Maintainer, St. Albans, W. Va. Bulletin No. 1, dated January 2, 1945.

(b) That H. R. Delaney be restored to temporary position of Signal Maintainer, St. Albans, W. Va., to which he was assigned by bulletin No. 5, dated April 21, 1944.

JOINT STATEMENT OF FACTS: There are two positions of signal maintainer located at St. Albans, W. Va. One a branch line position, territorial limits, Cabin Creek and Coal River Branch Lines; Charleston and Owens Flashers and Elk Navigation lights, permanently assigned to D. A. Tyree. The other, a main line position, territorial limits, Mile Post 463 to 477, permanently assigned to W. J. Woods.

On March 8, 1944, Tyree's position was bulletined as a temporary vacancy by Bulletin No. 3, showing that Tyree was off sick. Bulletin No. 3 is exhibited as Joint Exhibit "A". Award Bulletin No. 3 dated March 29, 1944, (Joint Exhibit "B") awarded the temporary vacancy to W. J. Woods.

Woods' permanent or regular position was advertised as a temporary vacancy by Bulletin No. 5 (Joint Exhibit "C") dated April 6, 1944, and was assigned as a temporary vacancy to H. R. Delaney by Bulletin No. 5 (Joint Exhibit "D") dated April 21, 1944.

Tyree was granted a partial or disability annuity by the Railroad Retirement Board and his regular or permanent position as signal maintainer at St. Albans was bulletined as a permanent vacancy by Bulletin No. 40, (Joint Exhibit "E") dated September 9, 1944.

The employes protested the advertising of Tyree's position as a permanent vacancy, contending that it should be continued as a temporary vacancy until Tyree became 65. Copy of letter of protest from the General Chairman to the Assistant Chief of Personnel dated September 12, 1944, is submitted as Joint Exhibit "F".

The Assistant Chief of Personnel replied to the General Chairman on October 4, 1944, a copy of the reply being submitted as Joint Exhibit "G", agreeing that the vacancy be re-advertised as a temporary vacancy.

The General Chairman replied to Assistant Chief of Personnel's letter on October 8, 1944, copy of which is attached as Employees' Exhibit "A", advising that it was not necessary to re-advertise the position and further

expiration of thirty days from the date such vacancies occur, unless it is apparent that the temporary vacancy will be in excess of thirty days." (Emphasis supplied.)

It is the carrier's reasoning that when the Tyree position was advertised the third time (first temporary, then permanent, and then temporary) a temporary vacancy was created on the position permanently assigned to Woods. This reasoning finds full support in the understanding as to future uniform handling set forth in Joint Exhibit "L". It will be seen that the procedure there is:

- I. Man gets off sick. Position is bulletined as a temporary vacancy account of the employe being off sick. All employes on the seniority district know that the job will be rebulletined if and when the man gets an annuity.
- II. Man is granted partial annuity. Position is bulletined as a new temporary vacancy. All employes on the seniority district know that the job will not be re-bulletined until the man becomes 65.
- III. Man becomes 65. Position is bulletined as a permanent vacancy.

It will be seen that the carrier proceeded in its re-bulletining of the Woods regular or permanent position in the full spirit of that arrangement, giving senior employes an opportunity to bid on the position.

When the Woods' permanent position was re-bulletined as a temporary vacancy the following bids were received.

Name	Seniority as Maintainer
A. S. Dillard	September 24, 1924.
Lester Thompson	March 26, 1929.
H. R. Delaney	May 1, 1944.
C. D. Butcher	January 22, 1945.

The vacancy was awarded to A. S. Dillard, the senior bidder. It will be seen, therefore, that the position was awarded to a man holding 20 years more seniority than H. R. Delaney, who had bid it in previously on the basis of Woods being away only during the sickness of Tyree.

It should be apparent from even casual examination of the case that had the carrier not re-bulletined the Woods job as a temporary vacancy, it would have been immediately confronted with a claim that senior employes were being denied opportunity to bid on a preferential position.

The carrier has proceeded at every point in this case in the best of faith, basing its action on its understanding of the spirit and intent of the rules that a temporary vacancy did exist on Woods' permanent position when he was awarded Tyree's position on a temporary basis. To disturb the carrier's action in this case will result in permitting an employe with 20 years less seniority to hold a preferential position.

OPINION OF BOARD: There are two signal maintainer positions involved in this claim which we will refer to herein as position Number 1 and Number 2. Position Number 1 was permanently assigned to Mr. Tyree and position Number 2 to Mr. Woods.

Tyree went off sick. In accord with Rule 50, position Number 1 was, on March 8, 1944, advertised for bids. The bulletin shows that it was assigned permanently to Tyree and was to be filled on a temporary basis. Mr. Woods, who held position Number 2, was assigned position Number 1 on March 29, 1944. Position Number 2 was then advertised on April 6, 1944. The bulletin recites that it was assigned permanently to Mr. Woods, and was to be filled on a temporary basis. On April 21, 1944, position Number 2 was assigned to Mr. Delaney, on whose behalf this claim is made.

Thereafter, Mr. Tyree was granted a partial or disability annuity by the Railroad Retirement Board. The carrier then bulletined position Number 1 for bids as a permanent position on September 9, 1944. The carrier, considering that the rule did not cover this situation, did this in accord with what it considered to be past practices, and in accord with certain statements it had made in March 1944 (see Carrier's Exhibit A).

The organization protested this bulletin on September 12, 1944, claiming that " * * * this job and all similar cases should be advertised as temporary positions until the employe is eligible for a permanent pension" and asked that the bulletin be cancelled. The carrier agreed and advised the General Chairman on October 4, 1944, that the position would be readvertised as a temporary position. The organization replied by letter dated October 8, 1944, stating that it saw no necessity to readvertise the position. The carrier states it never received this letter.

On December 7, 1944, a special agreement was entered into between the carrier and the organization. It provided that "in the future" when an employe was off sick in excess of 30 days, the position was to be advertised as a temporary vacancy in accordance with Rule 50. If later, and before reaching 65 years of age, the employe was granted a partial or disability annuity, the position then was to be rebulletined as a temporary vacancy, and finally, when the employe reached 65 years of age, the position would be rebulletined as a permanent vacancy. The agreement further provided that to dispose of the Tyree case, it should be rebulletined as a temporary vacancy "in order that all of the employes on the roster may know the conditions under which the position is bulletined and have an opportunity to bid on it." The agreement further provided: "As to the cases which have already occurred on the other divisions; i.e., other than the Tyree case on the Huntington Division, the committee wishes such positions to remain bulletined as they are."

Thereafter, on December 18, 1944, the bulletin of September 9, 1944, was cancelled and the position (Number 1) readvertised as a temporary vacancy and on January 2, 1945, was assigned to Mr. Woods, who was at the time holding it as a temporary assignment under the March 29, 1944, bulletin.

The carrier then on January 2, 1945, bulletined position Number 2, as a temporary vacancy, the bulletin showing that it was assigned permanently to Mr. Woods, and held temporarily by Mr. Delaney, and on March 5, 1945, awarded the position to Mr. Dillard. This action precipitated this claim.

The employes contend that no vacancy had occurred in the temporary assignment in position Number 2, and that it should not have been readvertised. The carrier contends that it proceeded properly and that the agreement of December 7, 1944, in referring to the Tyree case covered both positions Number 1 and Number 2, and that when position Number 1 was rebulletined and reassigned to Mr. Woods, it created a second temporary vacancy in position Number 2, requiring rebulletining and reassigning of that position.

We undertake to determine first the applicability of the agreement of December 7, 1944. It is not disputed that the carrier proceeded properly in rebulletining position Number 1 as a temporary vacancy. Should the carrier have rebulletined position Number 2 as a temporary vacancy? The agreement provides for the handling of cases "in the future" where the employe is granted a partial or disability annuity. The agreement further provides: "As to the cases which have already occurred on the other divisions; i.e., other than the Tyree case on the Huntington Division, the committee wishes such positions to remain bulletined as they are." The cases "on the other divisions" had been bulletined and assigned as permanent vacancies when the incumbents had been granted annuities. That Handling was not to be disturbed and except for the Tyree case the positions were "to remain bulletined as they are."

We are of the opinion that the special agreement of December 7, 1944, does not cover the question of whether or not position Number 2 should be

rebulletined. It does not apply to position Number 2. At the time the agreement was entered into, no question had arisen regarding position Number 2. The agreement was not intended to cover the situation that existed on position Number 2. The agreement deals with positions that have become or will become vacant where the incumbent has been granted parital or disability annuity.

Neither Mr. Woods nor Mr. Delaney come within that classification and position Number 2 does not. Mr. Woods holds and has held the permanent assignment to position Number 2. There is no question about that. Mr. Delaney held the temporary assignment to position Number 2 under bulletin issued under Rule 50. There can be no question about that. We likewise see no question about the fact that no vacancy has arisen on position No. 2 which requires or permits its rebulletining. It is controlled by Rule 50 and not by the agreement of December 7, 1944.

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

The carrier improperly bulletined position Number 2 on January 2, 1945, and Mr. Delaney should be restored to that position.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.