

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that the Carrier violated the rules of the Signalmen's Agreement when, on June 4, 1945, it permitted C. A. Leetz, who holds seniority under the Signalmen's Agreement but who was regularly assigned to a position wholly excepted from the Signalmen's Agreement (Assistant Supervisor Telegraph and Signals, Baltimore) to voluntarily vacate his excepted position and displace an employee occupying a position in the foremen's group.

(b) Claim that C. A. Leetz should have been required to exercise his seniority in accordance with Section 13 of Article 4 of the Agreement.

(c) Claim that any employee who is displaced by C. A. Leetz in the foremen's group shall be restored to his position in this group and shall be compensated for the difference in the rate paid him and what he would have earned had he remained in the foreman's group.

(d) Claim that all other employees who were subsequently displaced as a result of this improper displacement by Leetz be restored to their former positions and be compensated for all differences in wage rates and be reimbursed for all expense involved.

EMPLOYEES' STATEMENT OF FACTS: On April 1, 1942, C. A. Leetz was promoted from a position on the Chicago Terminal Division classified under the provisions of the T. & S. agreement to an Assistant Signal Supervisor on the Pittsburgh Division, and on April 16, 1943, was transferred to the Maryland Division in the same capacity.

On June 4, 1946, Leetz voluntarily relinquished his position as Assistant Signal Supervisor on the Maryland Division and was permitted by the Carrier to exercise his seniority on the Chicago Terminal Division (Leetz's home seniority district) by displacing a junior T. & S. Foreman. Other employees on the Chicago Terminal Division were disturbed as a result of Leetz being permitted by the Carrier to improperly exercise his seniority.

There was no force reduction, neither was there any permanent position or permanent vacancy existing at the time Leetz was permitted to improperly exercise his seniority on the Chicago Terminal Division.

Positions of Assistant Signal Supervisor are recognized as being excepted from the provisions of the T. & S. Agreement and Leetz had occupied a position in such excepted group since April 1, 1942.

There is an agreement in effect between the parties to this dispute bearing effective date of June 1, 1943. We understand a copy of this agreement is on file with the Board, and we request that it be considered a part of the record in this dispute.

OPINION OF BOARD: We are unable to find any provision of the agreement that permits a promoted employe to elect, of his own volition, to return to a position covered by the agreement.

Section 13 that saves seniority for an employe while occupying a position not covered by the agreement expressly provides the manner in which seniority so saved may be exercised. Those provisions are found in Article 4, Section 8, and Article 4, Section 20. The one covering the right to claim a position by reason of reduction of force or the abolition of a position, the other the right to claim a position by bid after bulletining. And these provisions vitalize the seniority preserved rather than form a method of procedure as contended for by carrier.

Nor may added privileges be assumed, as argued by carrier, by reason of the thirty-day probationary period authorized by Section 13 (c). Such provision is but a reaffirmation of a temporary vacancy in the former position for the like period provided for in other temporary vacancies.

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 Employes involved in this dispute are respectively carrier and employes 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

(2) continued.

"If such a position cannot be filled through this procedure, the qualified employe in active service in the class in which the position is advertised, with the least seniority in that class, shall be required to accept such position, and if he declines to accept the position he shall forfeit his seniority in the class in which the position exists except that:

'If a position is under advertisement in the mechanic class and it cannot be filled by recalling an employe reduced or furloughed from the class in accordance with Article 4, Sections 9 and 10, and position shall be filled by an assistant signalman who has completed his four-year course of training. If the position cannot be filled with such an assistant signalman the qualified mechanic in active service with the least seniority as mechanic shall be required to accept the position and if he fails to do so shall forfeit his seniority in the mechanic class.

"(e) An application from an employe for a position he has just vacated by bidding to another position shall not be considered until the first position is again vacated, unless for any reason such employe has been displaced from the position he has been awarded by bid, or unless no bids are received for the position which he has just vacated. In either of these events his application for the position he has just vacated shall be considered.

"(f) An employe reduced to a lower class in force reduction shall have no bidding rights in the higher class until he returns to an advertised position or permanent vacancy in such class in accordance with Section 9 a() of this article. An employe furloughed from active service shall have no bidding rights until he returns to active service in accordance with Section 10 (a) of this article, and in such case he shall have bidding rights in the class to which he returns."

That the carrier violated the terms of the agreement in permitting this employe to voluntarily vacate his excepted position and displace an employe occupying a position covered by the scope of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.