

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
FLORIDA EAST COAST RAILWAY

STATEMENT OF CLAIM: Claim that Signalman Donald Johns be allowed actual expenses incurred while improperly required to remain away from his assigned headquarters from November 19, 1945, to February 24, 1946.

EMPLOYEES' STATEMENT OF FACTS: Donald Johns is a regularly assigned, hourly rated signalman with headquarters in camp cars. He secured this position by virtue of his seniority. His regular assignment as signalman is eight hours per day, six days per week, and while working this assignment he was not subject to call as provided in Rule 10 of the current Signalmen's agreement.

On November 5, 1945 Johns was instructed by his superior officer, Mr. W. A. Hoffman, Superintendent Telegraph and signals, to work a maintainer's position at Stuart, Florida.

While filling this vacancy as required by the Superintendent T. & S., Johns was not able to stay at his regularly assigned headquarters in the camp cars, which caused him to incur personal living expenses consisting of meals and lodging.

Johns submitted a certified true and correct statement of the amount of actual living expenses incurred to the Superintendent T. & S. The expenses claimed in this statement accrued while away from his headquarters in the camp cars working at Stuart, Florida, in filling the vacant maintainer's position as instructed and required by Hoffman. The items listed in the statement covering the expenses incurred have not been disputed.

Under date of December 6, 1945, the Superintendent T. & S. advised Johns he could only allow expenses for the first ten days he (Johns) worked in the vacancy at Stuart.

Johns protested the decision of Mr. Hoffman on the basis that his regular headquarters were in camp cars, and in view of the fact that he has been required to fill the position at Stuart, and the outlay for living expenses was a personal loss to him. Johns requested the Superintendent T. & S. to arrange for a junior employe to fill the vacancy at Stuart. Johns' request was not complied with and he was required to continue in the vacancy at Stuart.

On December 10, 1945 bulletin No. 780 was posted which advertised the vacancy in the maintainer's position at Stuart. On December 24, 1945

16. If Mr. Johns had been improperly instructed to fill the temporary unbulletined vacancy on November 6, 1945, (and the facts show that he was not), and had been improperly forced to fill it after it became subject to the provisions of Rule 20 (g) on December 24, 1945, (and the facts show he was not), it is the position of the Railway that he still would not be entitled to reimbursement for the personal expenses claimed for the very plain and simple reason that no such provision is contained in the Agreement. All compensation that he or any other member of his craft is entitled to under any condition or circumstance can only be determined from the duly negotiated Agreement with his craft.

The claim should be denied.

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OPINION OF BOARD: The facts and various rules of the effective Agreement between the parties, which are claimed to be applicable, have been set forth and argued at great length by the parties in their submission of this matter and will not be herein further set forth except as they are necessary in our determination of the issue.

C. C. Titus was the Carrier's regularly assigned maintainer at its station located on its main line at Stuart, Florida. On November 5, 1945, he reported off duty because of illness and was granted a three weeks' leave of absence.

Donald Johns, the Claimant, who had entered the service of the Carrier as a helper on April 3, 1939, been promoted to assistant signalman on July 7, 1941, and to signalman on January 3, 1944, and who at that time was regularly assigned to a gang with headquarters in camp cars, was directed fill the temporary vacancy caused by the illness of Titus. He did so on November 6, 1945. While working at Stuart, Johns was away from home and not being able to stay in camp cars incurred personal living expenses for which he makes this claim.

At the end of the three weeks' leave Titus was still unable to work and his leave was then extended for two additional weeks. At the end of these two weeks he was still unable to return and his leave was then extended to January 31, 1946.

On December 6, 1945, when Johns presented his bill for personal living expenses, he was advised he would only be allowed those expenses for the first ten days he worked at Stuart and was paid accordingly. He then requested that a junior employe fill this vacancy.

On December 9, 1945, he again asked to be relieved and that someone else be put in his place and he be returned to his camp car assignment.

On December 10, 1945, a bulletin was posted by the Carrier advertising this temporary vacancy. No one bid thereon and a bulletin to that effect was posted on December 24, 1945. Johns continued to fill the vacancy although doing so under protest.

On advice of Titus, physician, the Carrier, on January 14, 1946, extended his leave to July 1, 1946. It then posted a bulletin advertising the position for a six-months' period. No bids were received as evidenced by its bulletin dated January 28, 1946. However, on February 25, 1946, Johns was relieved by C. W. Smith who had been assigned by the Carrier as temporary maintainer. This is evidenced by bulletin dated February 26, 1946. Johns then returned to his former assignment.

In the first instance, the payment of Johns' personal expenses incurred while filling this temporary vacancy was subject to and controlled by the provisions of Rule 16 of the effective agreement between the parties. The record shows he was paid his personal expenses for the first ten days of his stay at Stuart in accordance with the provisions of this Rule. His assignment at Stuart continued on that basis until December 24th when Bulletin No. 783 advised that no bids had been received for the temporary vacancy.

After December 24, 1945, Claimant came under the provisions of Rule 20 (g) and the question that presents itself is, did the Carrier violate its provisions in keeping Johns on this job? Johns claims there are three others, namely, J. C. Forson, A. B. Bennett and L. A. Dahlquist, any one of whom should have been assigned thereto when he requested to be relieved because of his seniority.

The record as to these three employes is as follows:

J. C. Forson entered the Carrier's service in the Communications-Signal Department on October 25, 1943, as a helper. He became an assistant signalman on January 24, 1944, in which capacity he was serving on Dec. 24, 1945. During this period Forson was assigned to a temporary position of signalman with a rail relaying gang handling rebonding and track wiring. He held this position from July 12, 1945, to November 23, 1945, when he bid on and was assigned to the position of assistant signalman.

A. B. Bennett entered the service of the Carrier in the Communications-Signal Department on October 25, 1943, as a helper. He became an assistant signalman on September 7, 1944. On December 4, 1945, Bennett was assigned to a temporary position of signalman with a rail relaying gang handling rail rebonding and track wiring which position he was holding on Dec. 24, 1945.

L. A. Dahlquist entered the service of the Carrier in the Communications-Signal Department on March 22, 1943, as a helper. He became an assistant signalman on October 20, 1944. On December 13, 1945, he was being temporarily used as a signalman on an unbulletined position in the line-of-road gang to assist in wiring signals to which position he had been assigned on Dec. 13, 1945.

Under the provisions of the effective agreement we do not think any one of these three men was a "promoted man" within the provisions of Rule 20 (g) on December 24, 1945. Therefore, the Carrier had the right to determine if any of these men in the next lower classification were qualified for, except where it has limited itself by contract, the Carrier's right of selection is wholly within the discretion and judgment of management and this Board will not substitute its judgment for that of the Carrier unless it can be clearly shown that its action was biased, prejudiced or one of error in judgment.

Under the facts here disclosed this case is not one that warrants any interference by this Board with its decision.

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 the provisions of the agreement between the parties has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1947.