

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: (a) That the Carrier violated the current Signalmen's Agreement it failed to promote M. M. Dorrett to the position of Signalman.

(b) That M. M. Dorrett be given a seniority date as Signalman as of June 20, 1947.

(c) That M. M. Dorrett be paid the difference between the Assistant Signalman's rate of pay now being received and Signalman's rate of pay which should have been paid had the Agreement been properly applied, from June 20, 1947 to the time M. M. Dorrett is promoted to the position of Signalman or Signal Maintainer.

EMPLOYEES' STATEMENT OF FACTS: M. M. Dorrett was employed by the Carrier on April 22, 1943, as a Signal Helper, and was promoted to an Assistant Signalman's position on July 16, 1943, and has continued on such position to date. On December 2, 1946, M. M. Dorrett was given the highest Assistant's service step rate, as shown in Rule 74 of the current Agreement, and served in excess of 145 working days on such highest step rate.

On June 2, 1947, a Signalman's position was advertised for seniority choice by bulletin No. 508. Dorrett bid on this position but was not assigned to it. The position was filled by the Carrier promoting Assistant Signalman A. A. Haley and assigning him by Bulletin No. 510. Haley has a seniority date as an Assistant Signalman as of July 3, 1946.

There is an agreement between the parties to this dispute bearing effective date of April 1, 1947. We understand this agreement is on file with this Board, and request is respectfully made that it be considered as a part of the record in this dispute. This dispute has been progressed on the property in the usual manner for correction without securing a satisfactory settlement.

There are no exceptions to the current working agreement which have any effect on the instant dispute.

POSITION OF EMPLOYEES: The Brotherhood contends that the Carrier violated the Signalman's Agreement when on June 20, 1947, it refused to promote Dorrett who had served 145 days at the highest Assistant's step rate, thus completing the four-year training period, and base its contentions

cast signal foundations involving the handling of concrete beams and concrete top segments; assist in the handling and raising of poles; the installation of lightning arrester boxes on poles and the installation of signal instrument cases, all entailing the lifting, carrying or handling by such employees of weights considerably in excess of the limits prescribed for females by the Industrial Welfare Commission.

In consideration of all of the circumstances present in this dispute, it is the position of the carrier that its action in denying the claimant promotion to position of leading signalman or signalman, cannot be interpreted in any manner whatever to be in violation of any rule of the current agreement, as alleged by the petitioner; on the contrary, such action was entirely within the prerogative reserved to the carrier under the explicit provisions of Rule 47 (a) of the agreement.

CONCLUSION

The carrier submits that it has established that the claim in this docket is without basis or merit and therefore, respectfully asserts that it is incumbent upon the Division to deny said claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Mrs. M. M. Dorrett, had completed four years of service as an Assistant Signalman. On June 2, 1947 Carrier advertised a Signalman's position for seniority choice by bulletin. Claimant bid on the position but was not assigned. A junior Assistant Signalman was assigned and appointed Signalman effective June 20, 1947. Employees file claim as indicated.

The Employees rely on the provisions of Rule 30 (d) of Agreement effective April 1, 1947 which rule reads as follows:

"(d) PROMOTION AT END OF FOUR YEARS TRAINING.

At the expiration of four years service (1160 working days) as assistant signalman or assistant signal maintainer, an employee shall be promoted to a position of signalman or signal maintainer if a vacancy or new position is available. If position is available promotion must be accepted. If no position is available, such assistant shall continue at the highest assistant's rate of pay until it is possible to promote him to a position of signalman or assistant signal maintainer. If position is available and an assistant signalman or assistant signal maintainer after four (4) years service (1160 working days) refuses promotion, he shall be removed from the service. If there are two or more assistants on a seniority district who have completed four (4) years service (1160 working days) as such, the senior shall be promoted to fill the first vacancy or new position.

An assistant signalman or assistant signal maintainer who has completed 145 working days at the highest service step rate shown in Rule 74 shall be considered as having completed the four (4) year period of training."

Carrier, on the other hand, insists that Rule 30(d) must be read in conjunction with and is in effect subordinate to Rule 47(a) of the same Agreement which reads as follows:

"Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail—the Management to be the judge."

Following up on its contention that Rule 47(a) applies, Carrier avers:

"Manifestly, it is within the province of the carrier in the first instance to determine and judge whether an employee has the requisite ability to fill a position in a higher seniority class and thereby warrant promotion. In the instant case, the carrier's action in denying promotion to the claimant was not based upon arbitrary and partial

motives; on the contrary, such action was based upon the fact that by reason of the limitations placed upon her training while occupying the position of assistant signalman as result of the restrictions existing under the statutes of the State of California and the order of the Industrial Welfare Commission covering the regulation of hours of service and working conditions of females employed in the transportation industry (a copy of said order is attached as Carrier's Exhibit B), she was not able to acquire, and consequently, did not possess the requisite ability to fulfill either the position of signalman or that of leading signalman."

The language of Rule 30 (d) is clear and unmistakable. It is specific in requiring promotion conditions only upon the expiration of four years of service as assistant signalman or assistant signal maintainer. It is not lacking in mutuality for it provides a severe penalty for refusing to accept promotion. Its provisions are set forth in mandatory language. Thus, it specifically requires promotion only on condition that an employee complete four years of service as an Assistant Signalman or Assistant Signal Maintainer. Rule 47(a) is a general promotion rule. It is a well recognized principle of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former. Hence, the provisions of Rule 47(a) do not override the definite, specific requirements of Rule 30(d).

We recognize that promotion of a female employee to the position of Signalman may work considerable difficulty upon the Carrier in seeing to it that she is not assigned tasks, the performance of which may involve violation of the California statutes referred to in the above-quoted portion of Carrier's submission. However, that is a matter of which the Carrier must be presumed to have been well aware when it appointed Claimant to the position of Assistant Signalman, which at the expiration of four years of service could lead nowhere but to an appointment as Signalman. Carrier had women employees in the classification of Assistant Signalman at the time of the negotiation of this Agreement, yet there is no exception therein indicating that female employees would be treated any differently than males. We are required to give effect to the terms of the Agreement as written. Accordingly, we have no alternative but to hold that a sustaining award is in order.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.