

Award No. 4940

Docket No. SG-4820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**ATLANTA & WEST POINT RAILROAD— THE WESTERN
RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atlanta and West Point Railroad Company—the Western Railway of Alabama—the Georgia Railroad that:

Mr. C. M. Rodgers be paid the difference between what he received in compensation as Assistant Maintainer and that of Signal Maintainer between December 19, 1946, and August 4, 1947.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 4, 1946, Mr. C. S. Coggins, Supervisor, T. T. & S., issued Bulletin No. 10 advertising a position of Signal Maintainer at Thomson, Ga., for bids until 12 o'clock noon December 14, 1946. This position was vacated by David Daniel.

Under date of December 19, 1946, the above bulletined vacancy was awarded to Mr. Barney Chandler. Rodgers' application for this position was not considered on the basis of his seniority.

The seniority of Rodgers and Chandler is herewith reproduced from a copy of the 1947 seniority roster, dated February 10, 1947:

	Signalman	Assistant	Helper
Rodgers, C. M.	12-01-46	1-04-45
Chandler, B. G.	12-19-46	8-20-45

A corrected seniority roster, dated August 22, 1947, shows the following corrections:

	Signalman	Assistant	Helper
Rodgers, C. M.	7-01-46	12-01-46	1-04-45
Chandler, B. G.	12-19-46	12-19-46	8-20-45

Particular attention is respectfully directed to the corrected roster which shows Rodgers as being senior to Chandler.

Under date of December 24, 1946, the Local Chairman protested the assignment of Chandler over Rodgers to the position of Signal Maintainer at Thomson, Ga., to Mr. Coggins, Supervisor T. T. & S., at Atlanta, Ga., because Rodgers was the senior bidder and filed claim for difference in pay as comprehended in the Statement of Claim.

road—The Western Railway of Alabama and the Georgia Railroad, and agreement was made effective September 1, 1946. At that time Claimant was working as Signal Helper, having been demoted from position as Maintainer.

POSITION OF CARRIER: Two separate agreements were entered into with the Signalmen, one for the Atlanta & West Point Rail Road—The Western Railway of Alabama; the other for the Georgia Railroad. However, the two railroads were considered as one seniority district. After consummation of agreement we attempted to make up seniority roster. We ran into quite a bit of difficulty due to the men being transferred back and forth, some of them being promoted and then demoted. This was during the early part of 1947 and it was finally determined that Rodgers would be given a date of July 1, 1946, as Maintainer, that being the date he was first appointed Maintainer. After that was done, then the General Chairman for the first time claimed he should have been given Maintainer's job on December 19, 1946.

Bear in mind, please, that Rodgers entered our service as Signal Helper on January 4, 1945, but two years later it was claimed that he was a competent Maintainer. He wasn't and the General Chairman knew he wasn't. We gave him a Maintainer's job in August 1947. He was not a qualified Maintainer at that time, but he was all we had.

Possibly they will argue that after we refused to give him the Maintainer's job in December 1946 that we used him as relief Maintainer until August of 1947. This we admit. We had to. We had nobody else. What we were doing in 1945 and 1946 was trying to build a 146 mile block signal system on one railroad with a Supervisor, one experienced Maintainer and a bunch of inexperienced kids and trying to keep a line going on our other road with an Assistant Supervisor and a mixed group of experienced Maintainers and green Assistants.

Frankly, we do not feel that Claimant has a just claim. We tried him out as a Maintainer and he failed. We did not feel justified in taking a chance on him six months later. We gave him a Maintainer's job eight months later, and as above stated, he was not a qualified Maintainer then, but he had accumulated sufficient experience to get by with the help of supervisory forces. He has now been in our service nearly five years and is a good Maintainer and a good employe.

We feel very keenly that this case should not have been brought up. We have here a situation where we treated a boy very fairly, we think, insofar as his seniority is concerned, and we feel the General Chairman took unfair advantage of our action in an attempt to bolster his claim.

We do not see any merit to this claim and respectfully request that it be declined.

OPINION OF BOARD: On December 4, 1946, the Carrier bulletined the position of Signal Maintainer at Thomson, Georgia. On December 19, 1946, the position was assigned to one Chandler whose seniority as a signal Maintainer commenced as of that date. The Organization contends that the position should have been assigned to Claimant Rodgers whose seniority date as a Signal Maintainer is July 1, 1946.

The record shows that the seniority roster dated February 10, 1947, shows that Rodgers had no seniority as a Signal Maintainer on that date and that Chandler had a seniority date of December 19, 1946. On August 22, 1947, a corrected seniority roster was worked out in which Rodgers was given a seniority date of July 1, 1946. The Organization contends that as Rodgers was a senior to Chandler when the Signal Maintainer position was bulletined at Thomson, Georgia, that it should have been assigned to Rodgers. Rodgers claims the difference in pay from December 19, 1946, until he was assigned as a Signal Maintainer on August 4, 1947.

We are obliged to say that the seniority roster of August 22, 1947, speaks with absolute verity for all purposes. While it is true that a seniority roster is but evidence of seniority, the degree of proof that it affords being dependent upon the provisions of the controlling agreement, it must be treated as conclusive here because no attack has been made upon it by either party. Consequently, the Carrier is in no position to now say that Rodgers was not qualified on December 19, 1946, to perform the work of a Signal Maintainer. The Carrier has by its own act conclusively established the right of Rodgers to the position, and having failed to protect against the retroactive effect of the seniority roster of August 22, 1947, by agreement or otherwise, it has, in effect, conceded the validity of Rodgers' claim. An affirmative award is in order.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.