

Award No. 5460

Docket No. SG-5344

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railroad that:

(a) The Carrier violated the current Signalmen's Agreement when it used Assistant Signalman George Knothe without proper compensation to fill a temporary vacancy at Grove Street Tower on February 7, 1947 and other temporary vacancies during hours outside of his regular working period.

(b) The Carrier violated the agreement when it required Knothe to lay off during his regular working period when used to fill temporary vacancies in the mechanic's class.

(c) Assistant Signalman Knothe be paid at time and one-half of the Signal Maintainer's rate for services performed outside of his regular working period while used by the Carrier to fill temporary vacancies in the mechanic's class.

(d) Assistant Signalman Knothe be paid at his own rate of pay for the hours he did not work his regular working period while filling temporary vacancies in the mechanic's class.

EMPLOYES' STATEMENT OF FACTS: The claimant, George Knothe, held a regularly assigned position as Assistant Signalman at Jersey City Terminal with working hours from 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M. daily except Sundays and holidays. He was awarded this position under bulletin advertising it as a new permanent position under date of January 7, 1947.

On February 6, 1947 claimant was taken off his regular assignment as Assistant Signalman and was used to fill a temporary vacancy at Grove Street Tower, a position with regular assigned hours from 2:00 P. M. to 10:00 P. M., for which he was properly paid on this date. He was used on occasions subsequent to February 6, 1947, but not properly paid for such service.

The services rendered by the claimant in the Maintainer's position at Grove Street Tower were temporary. He was not assigned to the temporary vacancies by or through the application of bulletin rules, and in performing services in temporary vacancies he worked outside of his regularly assigned hours for which he was paid the Maintainer's rate at straight-time.

keeping with the facts as we know them to be. Furthermore, we believe that the claim of George Knothe as set forth in my letter to Mr. Blowers dated November 4, 1947, is supported by the correct application of agreement rules.

Particular attention has been given to that part of your letter where you state:

'In many respects, this case is substantially similar to the case of DeSmet which was previously ruled on and which ruling was not appealed to the Board.'

We agree with you that the claim of Mr. Knothe is substantially the same as the DeSmet case, however, as a matter of information to you, we should like you to know that the DeSmet case was submitted to President Clark's office some time ago for submission in Ex parte Form to the Third Division of the National Railroad Adjustment Board. Under the policy of my organization these cases are submitted to the Board in the order received, which, no doubt, accounts for the delay in the DeSmet case.

In view of the fact that we both agree the Knothe case is substantially the same as the DeSmet case, and in light of the fact that the DeSmet case will be submitted to the Adjustment Board for a decision; we would like to propose for your consideration that the Knothe case be held in abeyance until the DeSmet case is finally disposed of by the Board, with the understanding that whatever the decision may be in the DeSmet case will apply in disposing of the Knothe case.

We hope that our suggested proposal would be acceptable to you. If not, please advise if you will be agreeable to join with us in submitting the Knothe claim to the Board for final disposition.

Please advise.

Yours truly,

(Sgd.) W. D. Wilson"

Thereafter, on April 26, 1948, Vice President P. W. Johnston confirmed the agreed-upon disposition of the Knothe case and, in part, said as follows:

"In view of the fact that the principles that are involved in the DeSmet case are the same as those involved in this case we are agreeable with your proposal that this case be held in abeyance and therefore disposed of on the basis of the decision in the DeSmet case."

The Third Division National Railroad Adjustment Board, in Award No. 4505, denied the claim by DeSmet. The Employes then, instead of abiding by their agreement, advanced the Knothe case alleging no decision in the DeSmet case. The Carrier declined and held that inasmuch as the Employes had proposed that the Knothe case be held in abeyance and to then dispose of it on the basis of the Award issued in the DeSmet case they should now rightfully withdraw and close this claim by Knothe. This they declined to do and progressed the matter ex parte to the Third Division.

The Carrier feels that this claim is entirely without merit based on the records as cited above and that it should be denied.

OPINION OF BOARD: Claimant, a regularly assigned Assistant Signalman, was temporarily assigned (not by exercising his seniority) to position of Signal Maintainer, for the period from February 6, 1947 to March 23, 1947. The hours of his regular assignment were from 8:00 A. M. to 12:00 noon—1 P. M. to 5 P. M., daily except Sunday and holidays; that of the temporary assignment were from 2 P. M. to 10 P. M.

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 by the Carrier.

AWARD

Claim sustained for period from February 7, 1947 to and including March 23, 1947. Claim denied as to any subsequent period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of September, 1951.

DISSENT TO AWARD NO. 5460; DOCKET NO. SG-5344.

The majority errs in its award sustaining claim when they hold that "The temporary service to which claimant was assigned was not a promotion within the rules governing the parties", because: (Underscoring added.)

It ignores the purpose and provisions of Rule 28 of the Agreement respecting promotions from Assistant Signalman class to Signalman's class.

It, in effect, holds Bulletins are necessary to a promotion for all vacancies and new positions, even for short periods, regardless of the fact that Rules 56 and 57 of the Agreement negotiated by the parties, provide framework with express limitations under which Bulletins shall be issued.

Awards cited to support this Award are distinguishable and are not in point here where a qualified assistant signalman was promoted in accord with practice, and temporarily worked as a signalman in higher class.

For these reasons we dissent.

(s) R. M. Butler,
(s) A. H. Jones,
(s) J. E. Kemp,
(s) C. P. Dugan,
(s) R. H. Allison.