

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

The name and seniority dates of J. K. Bullard be restored on the seniority roster of the Colorado Division Signal Department.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. K. Bullard, whose date of birth was September 21, 1932, was employed as a Signal Helper by this Carrier on July 31, 1951, promoted to Class "C" Assistant Signalman on August 20, 1951, and promoted to Class "B" Signalman on July 28, 1952. The Carrier granted Mr. Bullard a leave of absence that began on August 1, 1952. On August 28, 1952, Mr. Bullard entered military service, from which he was discharged on May 31, 1956. On August 22, 1956, Mr. Bullard reported to the Carrier for reemployment, was given an entrance to service physical examination and was notified that he was disqualified because of his physical condition. Under date of **January 20, 1958, Mr. John M. Royse, Local Chairman**, wrote the following letter to **Mr. G. A. Alexander, Superintendent**:

"This is to inform you that I have received a complaint from Mr. J. K. Bullard. Mr. Bullard claims that his name is no longer carried on the Colorado Division Seniority Roster.

Mr. Bullard was employed on the Colorado Division as Signalman. He entered Military Service and returned from Military Service in 1956. When he returned from military service he complied in every respect with the provisions of the Military Agreements in effect between our Brotherhood and the Santa Fe, by reporting to the Company within the specified time limits after his return. Mr. Bullard was not at this time able to pass the required physical examination because of arthritis.

tions and reexaminations shall, where practicable, be given without loss of time by the employee."

It is also significant to note that the Brotherhood representatives have not, in their handling of the instant dispute with the Carrier, ever advanced a contention that the claimant Mr. Bullard is physically able to return to the Carrier's service in a capacity covered by the Signalmen's Agreement and perform the duties thereof. The Brotherhood has simply contended that Mr. Bullard should have his name restored to the seniority roster.

In conclusion, the Carrier respectfully reasserts that the claim of the Brotherhood in the instant dispute is wholly without merit or support under the agreement rules in effect between the parties hereto and should be either dismissed or denied for the reasons expressed herein.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Employees' ex parte submission.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant left the Carrier's employ in 1952 to enter the military service, received a medical discharge therefrom in 1956 because of chronic arthritis, and within sixty days thereafter presented himself to the Carrier for re-employment. It was found that because of his chronic arthritis he was physically disqualified to perform the duties of any position in his seniority district, that his attempt to do so would be dangerous to him and other employees, and that in view of the absence of any known cure for arthritis there was no likelihood that he would recover sufficiently for such employment. Consequently he was informed by letter on September 25, 1956, that his name was being removed from the seniority roster, and it did not appear on the annual seniority roster of January 1, 1957.

No action was taken by or for Claimant until July 8, 1957, when Claimant asked the Signal Supervisor at La Junta to return him to service, and January 20, 1958, when the Local Chairman by letter protested his removal from the seniority list.

Several questions are raised as to what statutes and provisions of the Agreement apply, and what Claimant's rights are under them. However, it is impossible for us to consider those matters; for the objection was raised by Carrier on the property that the claim was presented long after the sixty day limit prescribed by Article V 1(a) of the August 21, 1954 National Agreement for the presentation of a claim or grievance after the date of the occurrence upon which it is based.

Since the Claim was not made within the time provided by the Agreement, this Board has no authority to consider it on its merits.

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

That the parties waived oral hearing;

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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1960.