

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee on the New York, New Haven and Hartford Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it allowed and/or permitted Signal Helper Thomas Handrigan, with a seniority date of April 30, 1956, to be improperly displaced by Signal Helper David Shapiro, a junior employe with a seniority date of May 28, 1956, on the New Haven Seniority District.

(b) The Carrier now pay Signal Helper Thomas Handrigan a day's pay at his respective Signal Helper's rate of pay for each day commencing August 1, 1956, that he was kept from working as a result of his being improperly displaced.

BROTHERHOOD'S STATEMENT OF FACTS: Mr. Thomas Handrigan was employed as a Signal Helper by this Carrier on the Boston Seniority Division and had an established seniority date as of September 27, 1955. He was working in that capacity at the time he was furloughed due to a force reduction on the Boston Seniority Division. Subsequently, on April 30, 1956, Mr. Handrigan accepted and was assigned to a position of Signal Helper in the Signal Shop on the New Haven Seniority District in accordance with Rule 36 of the current Signalmen's Agreement.

On May 28, 1956, Mr. David Shapiro was employed as a Signal Helper in the New Haven Signal Shop.

As a result of abolishment of a construction gang on July 31, 1956, on the New Haven Seniority District and through subsequent displacements, Mr. Shapiro was permitted by the Carrier to displace Mr. Handrigan on his Signal Helper's Position in the New Haven Signal Shop. A claim was filed in behalf of Mr. Handrigan for a day's pay at his respective Signal Helper's rate of pay for each day that he was not allowed to work due to being improperly displaced by Mr. Shapiro, who was a junior employe to Mr. Handrigan.

shall be understood to mean that full time employment is available, as afforded the regular assigned forces, for a period of not less than sixty (60) days."

It will be noted that the sole purpose of this rule is to allow a furloughed employe of one district to take employment on another district, and to protect his rights in the home district until such time as he may forfeit those rights by failure to return when recalled, or until he accepts permanent employment in the new district as a new man. That he does not establish seniority in the new district is borne out by Rule 31, reading, in part, as follows:

"Except as provided in Rule 43 seniority rights of employes are confined to one seniority district." (Emphasis ours.)

It follows then that claimant could not obtain seniority in the second district until he elected to forfeit all rights in the first district, and this he did not do.

A sustaining award in this case would, in effect, write into the Agreement a rule which is not now there. We respectfully submit that the Board is not empowered to do this. That this is so has been recognized by the Board in its Opinion in Award 1792, among others, from which we quote:

"The Agreement failing to provide seniority . . . , this Board should not by an award giving effect to Claimant's contentions, step in and write any such rule into the Agreement."

Rule 31, quoted in part above, is clear and unequivocal in its terms that ". . . seniority rights of employes are confined to one seniority district." Claimant could not, therefore, hold seniority in more than one seniority district at any one time. That he elected to retain and accumulate seniority on the Boston Division, his home district, and thereby was precluded from establishing any rights at the New Haven Signal Shop, was at least tacitly agreed to when both he and the Organization failed to enter protest within ninety days after posting of rosters on January 1, 1957, as provided in Rule 35. Copies of the roster of both districts are attached as Exhibit A (Boston) and Exhibit B (Signal Construction and Shop Forces). It will be noted that Claimant appears on the Boston Division roster with the number 129, and does not appear on the Signal Shop roster. Mr. Shapiro's name does not appear on the roster of Signal Construction and Shop Forces by reason of the fact that he resigned from employment with this Company on September 13, 1956. The allegation in the Employees' Statement of Claim that ". . . Signal Helper Thomas Handrigan, with a seniority date of April 30, 1956" was "improperly displaced" is false and must be disregarded. This being so, the claim is without merit either as to (a) or (b) and must fall of its own weight.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a controversy between the Brotherhood of Railroad Signalmen of America and the New York, New Haven and Hartford Railroad Company.

This is a relatively simple case and involves only one point. Thomas B. Handrigan was employed as a Signal Helper on the Boston Seniority Division and established seniority as a helper on September 27, 1955. Later he was laid off because of lack of work and he asked for the position of Signal Helper

in the Signal Shop at New Haven which vacancy was open without bidders and he began his service at the New Haven Signal Shop on April 30, 1956.

Later Mr. David Shapiro was employed in the Signal Shop at New Haven on May 28, 1956 and when further force reduction was put into effect Mr. Shapiro was retained in place of Mr. Handrigan.

It is the contention of the complainants that this was a violation of Rule 36 of the agreement between these parties. Such agreement being effective September 1, 1949, as amended. This is a seniority case and Rule 36 reads as follows:

"Employees laid off on account of force reduction shall be given opportunity for employment on advertised vacancies on other seniority districts in preference to the employment of new men on other seniority districts when additional men are needed. It will be the obligation of the laid off employee to make his desires known and to make himself available. They will continue to hold and accumulate seniority on their home seniority district and must return to their home seniority district in the order of their seniority when positions bulletined on their home seniority district indicate reasonably continuous employment being made available to them. Failing to return, they will forfeit all seniority rights on their home seniority district.

"'Reasonably continuous employment' as used in this agreement shall be understood to mean that full time employment is available, as afforded the regular assigned forces, for a period of not less than sixty (60) days."

The sole purpose of this rule is to allow a furloughed employee of one district to take employment in another district and to protect his rights in the home district until such time as he may forfeit those rights by failure to return when called or until he accepts permanent employment in the new district as a new man.

It is evident from reading the records that the claimant, Thomas Handrigan, could not bid for the position advertised in the Signal Shop Seniority District in the instant case since his seniority rights were confined to the Boston District.

Therefore, the claim is without merit and must be denied. In Award No. 1792 this Board held,

"The Agreement failing to provide seniority * * * , this Board should not by an Award giving effect to claimant's contentions, step in and write any such rule into the Agreement."

Also Award No. 7718:

" * * * According to many awards of this Division, this would be contrary to our proper function which is to apply the rules as they have been written by the parties and not to look beyond the language of a rule when it is plainly and unambiguously expressed."

See also Awards 8219, 7870, 8158, 7445 and 1609.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST. S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1961.