

Award No. 10319

Docket No. SG-9835

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
FLORIDA EAST COAST RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee on the Florida East Coast Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement and Article 12(b) of the Vacation Agreement of December 17, 1941, appended thereto, when it allowed Signalman B. L. Burke #2 to relieve Foreman J. E. Knight on Gang No. 1 during his vacation period from July 9, 1956, to July 20, 1956, inclusive, in place of Signalman C. A. Nieland, who was the oldest Signalman in seniority on Gang No. 1.

(b) The Carrier now pay Signalman C. A. Nieland the difference between the Signalman's rate of pay and the Foreman's rate of pay for the period of July 9, 1956, to July 20, 1956, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. E. Knight was the Foreman of Signal Gang No. 1 and received his vacation during the period of July 9, 1956, to July 20, 1956, inclusive. On July 6, 1956, Foreman Knight instructed Signalman C. A. Nieland, who was the oldest Signalman in seniority in Signal Gang No. 1, to relieve him (Knight) while he was on vacation. On Monday, July 9, 1956, a letter was received by Signalman B. L. Burke #2, instructing Burke to relieve the Foreman's position during the period Foreman Knight was on vacation from July 9 to July 20, 1956, inclusive. Inasmuch as Signalman Nieland was the oldest Signalman in seniority on Signal Gang No. 1 and the Carrier was not going to fill the Foreman's position with a regular relief man, Nieland was entitled to fill the Foreman's position in place of Signalman Burke, who was a junior Signalman to Signalman Nieland.

A claim was filed by General Chairman J. E. Dubberly with Mr. C. B. Cargile, Superintendent Communications and Signals, in behalf of Signalman Nieland for the difference in the rate of pay that he received as Signalman and the rate of pay as Foreman, which he would have received had the Carrier properly assigned him as senior Signalman to fill Foreman Knight's position.

The claim was progressed through the regular channels in the usual manner and was subsequently denied by Mr. C. L. Beals, Chief Operating Officer, on November 15, 1956.

qualifications necessary to lay out and direct the work of a gang. It was for these compelling reasons that Mr. Nieland was not used to provide relief for the foreman of Gang No. 1, while Mr. Burke provided it July 1 to 4, 1953, before his promotion to signalman, and between that time and the starting date of the instant claim regularly provided it whenever needed, viz., June 28 to July 19, 1954, December 13, 1954, to January 17, 1955, and one day, April 26, 1955.

For the reasons stated, the claim is without merit and should be denied.

* * * * *

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railroad Signalmen of America, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Carrier insofar as they relate to the case as handled on appeal on the property have been discussed with the Employees.

OPINION OF BOARD: Article 12(b) of the Vacation Agreement of December 17, 1941, as amended, is the article applicable to this dispute.

Foreman Knight received his vacation during the period July 9, 1956 to July 20, 1956 inclusive. A regular relief Employee was not utilized. Carrier was required to make an effort to observe the principle of seniority in accord with the provisions of Article 12(b) in temporarily filling the position.

On July 6 Foreman Knight, with Claimant, went over the work to be done during his vacation and instructed Claimant to relieve him (Knight) while he was on vacation. On or about July 6, Carrier received a letter from Signal Inspector Stephens protesting Claimant's being assigned acting foreman during Foreman Knight's vacation. On July 9 junior Signalman Burke #2 was instructed to relieve the Foreman's position during the period Foreman Knight was on vacation.

Carrier states that junior Signalman Burke #2 was the senior signalman on the gang with sufficient qualifications and ability to act as foreman.

Organization contends that no "effort to observe the principle of seniority" was made by the Carrier.

Article 12(b) does not make it mandatory for the Carrier to award the Claimant, the senior signalman, the foreman's position while the latter was on vacation.

The Carrier has substantial latitude in applying the principle of seniority under the provision of this Article. We cannot hold under the circumstances of the case that the Carrier made no effort to observe the principle of seniority.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.

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The majority has erred in their denial of this claim.

The claim turns on the interpretation of the words "effort will be made to observe the principle of seniority."

It was agreed by the principals that agreement rules concerning qualifications, bulletins, and promotion do not apply to this claim. The carrier then proceeds to present its case on the contention that the claimant was not qualified. The carrier's argument, in view of its admission that the qualification rules do not apply, should have been disregarded. Signal Inspector Stevens' letter likewise was based on alleged lack of qualification of the claimant and should have been disregarded also.

Inasmuch as the carrier agreed that the qualification rules do not apply and no defense was offered on other grounds, the only valid question for the Division, therefore, becomes one of availability. Both the claimant and Signaller Burke #2 were employed on vacationing Foreman Knight's Signal Gang. Both were equally available and the claimant was the senior signaller.

The carrier, therefore, failed to make an effort to observe the principle of seniority and the award is in error; therefore, I dissent.

/s/ W. W. Altus

W. W. Altus
Labor Member