

Award No. 10897

Docket No. SG-10327

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement on January 25, 1957, when it arbitrarily removed Assistant Signalman A. M. Nelson from his permanently assigned Assistant Signalman's position at East St. Louis Hump, which he had bid for and received on December 3, 1956, by awarding Bulletin No. 7-A, and which he had qualified on in accordance with the provisions of the agreement, and demoted him to Signal Helper, causing him to forfeit all seniority and rights in the Assistant's Class and suffer a substantial loss in earnings.

(b) The Carrier now restore A. M. Nelson to his former Assistant Signalman's position at East St. Louis Hump with all seniority and rights unimpaired and compensate him for his losses at two (2) cents per hour at pro rata rate for the first six-month period and additional increases each six months thereafter in accordance with the increases granted Assistant Signalmen under Article 6, Section 71(e), of the agreement until such time as he is restored to his former position with all seniority and rights unimpaired. This claim includes any and all overtime and calls accruing on his Assistant Signalman's position during his absence at overtime rate of pay until such time as he is restored to the position with all seniority and rights unimpaired. (Carrier's File No. 135-703-68 Spl., Case No. 34 Sig., cy 135-161, cy 135-703-68 Spl., Case No. 29 Sig., cy 135-703-68 Spl., Case No. 33 Sig.)

EMPLOYEES' STATEMENT OF FACTS: Under date of November 9, 1956, the Carrier issued Bulletin No. 7 advertising for bids an Assistant Signalman position with headquarters at East St. Louis Hump. Claimant A. M. Nelson, who at that time was working as a Signal Helper in Class 6, submitted bid for the position and being the senior bidder for the position was awarded the Assistant Signalman position by Bulletin No. 7-A, dated December 3, 1956.

man. The Board in Award 4507, Third Division, interpreted a rule practically identical to Article 3, Section 35, and stated:

"The language of Rule 30 (d) is clear and unmistakable. It is specific in requiring promotion conditions only upon the expiration of four years of service as assistant signalman or assistant signal maintainer. It is not lacking in mutuality for it provides a severe penalty for refusing to accept promotion. Its provisions are set forth in mandatory language. Thus, it specifically requires promotion only on condition that an employee complete four years of service as an Assistant Signalman or Assistant Signal Maintainer. Rule 47(a) is a general promotion rule. It is a well recognized principle of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former. Hence, the provisions of Rule 47(a) do not override the definite, specific requirements of Rule 30(d)."

When Carrier returned Mr. J. H. Lougeay to his position of Assistant Signalman and Mr. A. M. Nelson to his position of Signal Helper, it did so with the interest in seeing that seniority which an employee has acquired is protected.

Under the particular facts involved in this dispute, Carrier does not find where the contractual rights of Claimant A. M. Nelson have been invaded. The agreement in effect does not provide an answer to the situation here presented, and Carrier's action was merely the result of an attempt to rectify an error it had made.

There has been no violation as alleged by the Employees in Part (b) of their claim, and their request should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: On October 26, 1956 Carrier by bulletin advertised a vacancy for a Signalman position at East St. Louis, Illinois, whose seniority on the territory involved was in the seniority class embracing Classes 2, 3 and 4 Signal employees. No bids were received from employees holding seniority in that seniority class, but J. H. Lougeay, an Assistant Signalman in Class 5 did bid on the position and it was awarded to him on November 7, 1956. On November 9, 1956 Carrier advertised the vacancy thus created in the Assistant Signalman position and Claimant herein, previously a Signal Helper, bid for and was awarded this vacancy on December 3, 1956. He remained in this position until January 25, 1957, when he was demoted back to Signal Helper, at the same time Carrier demoted Lougeay back to Assistant Signalman in the belief it had erred in first awarding to the latter the Signalman position.

Claim was filed before the Board, Third Division (Supplemental), Docket Number SG-10233, in which Employees among other things requested the return of Lougeay to the Signalman position, with all seniority and rights restored. Subsequently the parties mutually agreed to withdraw that dispute, and by Award Number 10354 the claim was dismissed.

Claim also was filed before the Board, Third Division (Supplemental), Docket Number 10234, in which Employees requested compensation of Lougeay for the difference in Assistant Signalman's pro rata rate of pay and that of

a Signalman until such time as he should be properly restored to the latter position. Subsequently, in view of the disposition of Docket Number SG-10233, the Board referred this claim back to the property by Award Number 10855, "for further conferences so that this claim may be presented and adjudicated in toto and not in part".

Claim in behalf of Claimant Nelson herein properly should be disposed of finally in like manner as that in behalf of Lougeay, since Nelson was awarded Lougeay's former position initially and then demoted back at the same time. This claim therefore also should be referred back to the property to abide the result as to Lougeay and to be disposed of concomitantly with that which finally ensues as to the Lougeay claim, either there or before this Board, as the case may be.

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 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 claim should be remanded to the property for disposition indicated in the opinion.

AWARD

Case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1962.