

Award No. 11463
Docket No. SG-10867

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, especially Rule 40, when it allowed a Signalman who holds no seniority as a Signal Foreman to relieve a vacationing Signal Foreman from September 30 until October 12, 1957, inclusive, while Signal Maintainer M. P. White, who holds seniority as a Signal Foreman, was working as a Signal Maintainer and was available and willing to make the relief.

(b) The Carrier now compensate M. P. White the difference between the rate he received as a Signal Maintainer and the Signal Foreman's rate of pay for the period from September 30 to October 12, 1957, inclusive. [Carrier's File L-130-111]

EMPLOYEES' STATEMENT OF FACTS: M. P. White was assigned to a position of Signal Foreman on Assignment Bulletin No. 19, dated October 20, 1956, and the current seniority roster shows that he has a seniority date as a Signal Foreman of October 20, 1956.

On December 31, 1956, notice was given that Gang #6, to which Mr. White had been assigned, would be abolished effective January 4, 1957. As Mr. White was the junior Foreman, this forced him to exercise his rights according to the provisions of the Signalmen's Agreement, which he did by displacing on the position of Signal Maintainer at Marengo, Iowa, effective January 7, 1957.

There was a vacancy on Gang #4 from September 30, 1957, until October 12, 1957, inclusive, account Foreman C. R. Storck thereon taking his vacation. The Carrier assigned H. E. Clark, a Signalman who had no seniority as a Signal Foreman, to relieve Foreman Storck.

Inasmuch as M. P. White, who was working as a Signal Maintainer and who did have seniority as a Signal Foreman, was not used in the higher class

OPINION OF BOARD: In 1957 the Signal Foreman on Gang No. 4 was granted his vacation from September 30, 1957 through October 12, 1957 and Signalman H. B. Clark was assigned to fill the position. Clark had formerly been used as a relief foreman. Claimant occupied the position of Signal Maintainer and held a seniority date of October 20, 1956 as a Signal Foreman.

Petitioner contends that the assignment of Clark, and the failure to assign Claimant, to relieve the vacationing Gang No. 4 Foreman during his vacation period violated the applicable agreement, especially Rule 40. Carrier contends that no violation occurred because by the terms of Article 12 (b) of the National Vacation Agreement, Rule 40 was not applicable.

Article 12 (b) of the Vacation Agreement reads:

"As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

The first sentence of this provision removed the vacation absence of the Foreman on Gang No. 4 from the mandatory operation of the seniority requirements set forth in Rule 40. See Awards 5192, 5461, 9323, 9556. The second sentence obligated the Carrier to make an "an effort . . . to observe the principle of seniority" if the position was to be filled and a regular relief employee was not utilized for that purpose. A contrary interpretation of this clause would leave it ineffective; and there is no basis for concluding that the clause was precatory.

Carrier did not comply with this obligation. No regular relief employee was utilized to fill the position of the vacationing foreman. Claimant held seniority as a Signal Foreman. But Carrier made no effort to observe that seniority and suggested no reason for its failure to do so in filling the position involved. Claimant's qualifications, ability and availability for the position were not questioned.

Awards 8128 and 10319 are not apposite. In each of those cases, the Board found that the carrier made an effort to observe seniority.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1963.