

Award No. 11809
Docket No. SG-11435

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Railroad Company that:

The Carrier violated the provisions of the current Signalmen's Agreement, reprint effective March 1, 1953, as amended, particularly Rule 56 and Memorandum of Agreement No. 4 on page 53, effective August 1, 1952, when it transferred Susquehanna-Delaware-Wyoming-Jefferson Division Signal Gang to the Buffalo-Rochester Division on or about September 14, 1957, and subsequently failed and/or refused to advertise the gang positions as new positions in order to give Buffalo-Rochester Division employees preference to those positions. [Carrier's File: 220.12, Sig. Item 85]

EMPLOYEES' STATEMENT OF FACTS: Prior to July, 1952, the Buffalo-Rochester Divisions and the Susquehanna-Delaware-Wyoming and Jefferson Divisions were separate seniority districts. (For the sake of brevity, we will hereinafter refer to these districts as the Buffalo or Susquehanna districts). On July 9, 1952, the parties to this dispute signed a Memorandum of Agreement to cover combining the seniority rosters of these districts effective August 1, 1952. That Memorandum provided, among other things, that positions will be advertised in accordance with the Signalmen's Agreement and employees will have preference to bulletined positions having headquarters on the division on which they have seniority rights prior to August 1, 1952.

For some time a gang was maintained on each of the districts and in March, 1954, the Buffalo district gang was abolished. On September 23, 1957, Mr. W. F. Petteys, Division Engineer, wrote the following letter to Mr. W. D. Wilson, General Chairman:

"Referring to your letter of September 10th in connection with a proposed joint inspection of the Signal camp cars.

The Signal camp cars were moved from this division to the Buffalo division over the weekend of August 14th. These cars will be on the Buffalo Division for approximately three (3) months.

permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976.

"For the reasons given herein, we conclude that the claim should be denied."

In consideration of the plain fact that no new positions were either created or required when Signal Gang No. 82 moved to the Buffalo division, it is clear that the terms of Item 5 of the Memorandum of Agreement never became applicable and accordingly there could be no violation thereof.

Therefore, the Carrier submits that the claim herein is without merit and should be denied.

All data submitted herein have been presented to or are known to Petitioner.

(Exhibits not reproduced).

OPINION OF BOARD: On September 14 and 15, 1957, Carrier's Signal Gang No. 82 was moved from the Susquehanna-Delaware-Wyoming-Jefferson Division to the Buffalo-Rochester Division.

The record indicates that the parties actually reached tentative agreement on the property regarding the application of both Memorandum of Agreement No. 4 and Rule 56 of the basic Agreement which reads:

"Rule 56. New positions or vacancies which are expected to be of more than six (6) months' duration shall be bulletined as permanent within thirty (30) days previous to or ten (10) days following the date such new position is created or vacancy occurs. New positions or vacancies of more than thirty (30) days and less than six (6) months' duration will be bulletined within thirty (30) days as temporary. Except when temporary vacancy is due to physical disability of employee, a position which has been bulletined as temporary and does in fact exceed six (6) months, will be rebulletined at the end of six (6) months as permanent. If a position being filled under a temporary bulletin is abolished, the incumbent may return to his former position."

Under the provisions of Rule 56, which the Organization clearly states it wishes to apply, it is required only that positions of 30 days or more be bulletined. There is no requirement that positions of less than 30 days be so advertised. In line with these provisions we find the following statements by the Carrier.

"During our discussion of the matter on May 20, 1958 it was mutually agreed that in the future when there is work to be performed on the Buffalo-Rochester Division for a signal gang and it is known that the work to be performed will last for at least thirty days, the positions in the signal gang will be bulletined under Rule 56 and preference given to employees who held rights on the Buffalo-Rochester Division prior to August 1, 1952."

" * * * However, for the purpose of disposing of this item, we are willing to agree that when it is reasonably known that work on the Buffalo-Rochester Division will last 30 days or more, positions will be bulletined in accordance with Rule 56 of the current Agreement. This with the understanding that all claims in connection with this matter are withdrawn and closed."

The General Chairman, in earlier correspondence stated:

" * * * We feel that having another provision to cover the bulletining of positions would lead to confusion and would prefer to have one rule (56) apply in all cases. In other words when positions occur on the districts referred to in the Memorandum (#4) appearing on Page 53, of the current Agreement, they will be bulletined in accordance with Rule 56 and preference of assignment will be given to the employees on the district where the work is to be performed.

Thus, we find the Organization insisting upon the application of Rule 56, and the Carrier offering identical terms framed in slightly different language. We hold, therefore, that the parties themselves have agreed as to future handling.

As to the incident that gave rise to the instant dispute the General Chairman in a letter to Carrier stated:

"To abolish the gang and re-advertise the positions at this late date would result in displacements and probably loss of time for some of the employees through no fault of theirs and we would not press this case providing agreement can be reached for the future as outlined above."

Since the parties did, in fact, reach agreement regarding future handling, and since a further decision on the merits of the instant claim would be academic, the cause having ceased and there being no monetary claim, the instant claim will be dismissed.

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 parties have reached an agreement.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October, 1963.