

Award No. 12031

Docket No. SG-11585

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) Management violated Article 4, Section 20(b), of the current T. & S. Agreement, when by Bulletin No. 492, dated April 15, 1958, they withdrew position of Signalman, A-3-S, headquarters Harvard Avenue.

(b) The senior Signalman E. C. Rogers, should have been recalled and assigned to position A-3-S.

(c) E. C. Rogers be paid eight (8) hours at the rate of \$2.44 per hour for each day excluding Saturdays and Sundays, from April 22, 1958 to April 30, 1958, eight (8) hours each day, at the \$2.48 rate from May 1, 1958, and until position A-3-S is awarded under provisions of Article 4, Section 20(b). [Docket No. 83—Lake Region Case No. LR-25602]

EMPLOYES' STATEMENT OF FACTS: Under date of April 15, 1958, the Carrier issued Bulletin No. 492 advertising five positions for seniority choice. That bulletin has been reproduced and is attached hereto and identified as Brotherhood's Exhibit No. 1.

On April 29, 1958, the Carrier issued Bulletin No. 493 awarding some of the positions advertised in Bulletin No. 492 and showing one position as having been withdrawn. Bulletin No. 493 is attached hereto and identified as Brotherhood's Exhibit No. 2.

At the time Bulletin No. 493 was submitted, Mr. E. C. Rogers was the senior furloughed Signalman on the seniority district on which the withdrawn Signalman position was advertised.

On May 27, 1958, Mr. J. H. Briggs, Local Chairman, presented the following claim to Mr. G. C. Godshall, Supervisor C. & S.:

tional Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the provisions of the applicable rules of the controlling Agreement and the Railway Labor Act, as amended, the Third Division, National Railroad Adjustment Board, should deny the claim in this case. The Carrier has shown that no valid basis exists for a finding by this Board that the Agreement was violated under the circumstances heretofore related, but on the contrary, facts have been established showing that the Agreement and Board interpretations have specifically recognized the propriety of Carrier's actions in this case. Therefore, your Honorable Board is requested to deny the Employes' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the agreement may the Carrier withdraw an advertised position after a bulletin has been issued but before the time the position must be awarded?

We hold it may.

On April 15, 1958 the Carrier issued a Bulletin advertising five positions for seniority choice. On April 29, 1958 the Carrier issued a Bulletin awarding some of the positions and showing one position withdrawn.

The Carrier justified its action by pointing to adverse business conditions necessitating the withdrawal. It asserted that a re-examination of the force showed the allowable total would be exceeded by the position in question and it was withdrawn to maintain the authorized number of men.

The key language of the rules to which our attention has been directed is that of Article 4, Section 20(a), which reads:

"An advertised position shall be awarded within twenty (20) days following the posting of the advertisement to the senior qualified employe making application therefor in writing. Assignment to the position shall be made within ten (10) days following the date the position is awarded. Notice of the award shall be posted at all headquarters and a copy furnished the Local Chairman."

The Organization emphasizes the mandatory nature of the phrases "... shall be awarded . . ." and "Assignment to the position shall be made . . .," in support of its position.

However there is nothing in the agreement which forbids the cancellation or withdrawal of a position from advertisement before the position is awarded.

It is our opinion that the language of the rule is intended to cover existing unfilled positions and to prevent dilatoriness on the part of the Carrier in filling these positions. We do not believe it lends itself to the construction urged by the Organization in this particular situation.

Particularly is this so when we consider that there is nothing in the agreement excepting time requirements which would prevent the Carrier from abolishing this position immediately after it had been filled, had it in fact been filled.

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 Employes involved in this dispute are respectively Carrier and Employes 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 19th day of December, 1963.