Award No. 12224
Docket No. SG-11705

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis - San Francisco Railway Company that:

(a) The Carrier violated the Scope, Classification, and other provisions of the Signalmen's Agreement, particularly Rules 16(a), 16(b), 16(c), 16(d), 17, 15½(a), 15½(b), 42, 43, and 53, on September 19, 1958, when it denied Mr. Blaylock the right to displace when gang was abolished. See Mr. Garton's wire of September 19, 1958, to Mr. Blaylock. (E19)

(b) Mr. Blaylock was allowed time and one-half for holidays, Saturdays, and Sundays of September; therefore, he had not time made up.

(c) Mr. Blaylock be compensated at his respective rate of pay for 40 hours, which is the number of hours he lost for being denied to displace. [Carrier's File: 3011-34]

EMPLOYES' STATEMENT OF FACTS: During part of 1958 Signal Gang No. 9, consisting of Foreman L. G. Blaylock and Signalman J. T. Aultman, was performing signal work following system steel gang. The assigned work week of Gang No. 9 was Monday through Friday, with Saturday and Sunday as rest days. The steel gang was working straight through weekends and holidays, accumulating rest days to be taken at the end of the month.

On May 1, 1958, Messrs. Blaylock and Aultman wrote to Mr. R. W. Troth, General Superintendent, Communications and Signals, requesting permission to accumulate rest days, as follows:

"If permissible, we, the undersigned, would like to work straight through Saturdays, Sundays and Holidays at straight time rate. Until all rest days are made up for each month. And take all rest days at the end of the month."

Under date of May 9, 1958, Mr. C. I. Garton, Supervisor, Communications and Signals, wrote to Foreman Blaylock, as follows, granting the request that had been made to Mr. Troth on May 1:

Item (b) of the Employes' Statement of Claim to this Board states: "Mr. Blaylock was allowed time and one-half for holidays, Saturdays, and Sundays of September; therefore, he had no time made up." The General Chairman stated in his July 22 letter that such statement "was wrong." See Carrier's Exhibit B-3.

There is no question but what claimant was allowed payment at the straight time rate for the holiday, Saturdays and Sundays in question, and that he had five days accumulated time which he was rightfully required to observe before exercising seniority displacement rights.

Item (c) of the Employes' Statement of Claim is dependent upon the statement contained in Item (b). The Organization has admitted that the statement contained in Item (b) is wrong; therefore, the claim in its entirety is without merit or agreement support and should be denied. The facts of record do not warrant a sustaining award, and this Division is respectfully requested to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. Carrier had established a two-man gang, known as Signal Gang No. 9, consisting of Claimant as Foreman, and Signalman J. T. Aultman, and assigned to work Monday through Friday with Saturday and Sunday as rest days. The steel gang was working straight through their rest days and holidays and took their accumulated rest days at the end of the month.

On May 1, 1958, Claimant and Aultman wrote to Carrier's General Superintendent, Communications and Signals, requesting permission to work straight through Saturdays, Sundays and holidays at straight time rate until all rest days for each month are made up and to take such rest days at the end of the month. This was what the steel gang was doing. Carrier granted such permission.

On August 7, 1958, Claimant and Aultman wrote to Carrier as follows:

> "We the undersigned, of Signal Gang No. 9, would like to recall our letter of May 1, 1958. And go back to working Saturdays, Sundays and Holidays only when necessary. And then at time & half. Effective September first, 1958."

After a meeting with the Signal Supervisor, Claimant and Aultman again wrote Carrier on September 3, 1958, as follows:

> "Our conversation this A. M. concerning our letter to Mr. Troth 8-7-58.
>
> It is my desire to work straight time as the steel gang, but existing circumstances prohibited it. I think this can be worked satisfactory, but will have to be worked out when we both have more time.
>
> Pending working this out before the 15th of this month, and if a satisfactory arrangement can possibly be worked out. We the undersigned wish to recall our letter to Mr. R. W. Troth of the 8-7-58, and work straight through with the steel gang, as before."

Carrier abolished Claimant's and Aultman's positions as well as Gang No. 9 effective September 21, 1958. At that time Claimant had accumulated five rest days — one holiday, two Saturdays and two Sundays. He requested that he be permitted to displace a junior employe effective September 22, 1958. Carrier advised him that he could displace no one until September 29, 1958, because he was obliged first to take his five accumulated rest days.

Petitioner contends that Claimant's rest days were abolished when his position was abolished. Since rest days are attached to a position and not to an occupant of a position, Claimant had a right to displace a junior employe effective September 22, instead of September 29. For that reason, Claimant is requesting forty (40) hours of pay for the week he was denied displacement rights.

Carrier argues "that it could not have defended against a claim for overtime pay on his behalf for working on such rest days if it had permitted Claimant to displace on September 22, 1958." This position is not tenable.

Both parties agree that work days and rest days attach to the position and not to the occupant of the position. The rest days attached to the Foreman's position in Gang No. 9 were Saturday and Sunday. This was modified by agreement of the Claimant and the Carrier permitting Claimant to accumulate and take such rest days at the end of each month. Whether such an agreement violates specific Rules in the Agreement because Petitioner was not a party thereto is not a question for decision. It was argued on behalf of Petitioner that "be that as it may, the impropriety of the action of the individuals, concurred in by Carrier, is not encompassed in the instant claim, and, therefore, is not before us for decision."

On September 21, 1958, Claimant's position was abolished. As of that date there could be no rest days attached to that position. If Claimant had been permitted to displace a junior employe on September 22, he would have been entitled to the rest days of that position. The rest days of the new position may have been the same or other days than those which were attached to the abolished position.

Carrier was a party to the agreement which permitted Claimant to accumulate rest days and to take them at the end of each month. This arrangement was, apparently, advantageous to both parties. Carrier alone has control over establishing and abolishing positions. If there was a question of probable additional cost, Carrier could have abolished Claimant's position after he had taken his accumulated rest days. Whether because of miscalculation, misunderstanding or necessity, Carrier saw fit to abolish the position before Claimant took his accumulated rest days. For this, Carrier must bear the responsibility.

Seniority is one of the most basic essentials of a collective bargaining agreement. Without some secured rights to job priority, there would be no need for such an agreement; there would be no need for effective labor-management consultation. Claimant had contractual seniority rights to displace a junior employe when his position was abolished. Such rights accrued on September 21, 1958. He should have been permitted to displace a junior employe on September 22, 1958. Since he was not permitted to do so until a week later, he is entitled to forty (40) hours straight time pay at the hourly rate of the job to which he was assigned on September 29, 1958.

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 Carrier violated the Agreement.

AWARD

Claim is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.