

Award No. 12933

Docket No. SG-12025

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Boston and Maine Railroad Company:

In behalf of the following furloughed Terminal Division employees for all time lost as a result of the Carrier's action on February 16, 1959, in assigning and/or permitting New Hampshire Division employees, who hold no seniority on the Terminal Division, to perform work on the Terminal Division in violation of Article III, Section 5 (a), of the Signalmen's Agreement:

E. F. Gillis	J. E. Bixby	R. G. Vance
R. J. Salvador	J. L. O'Brien	E. E. Fegreus
R. P. Dunleavy	F. J. Prescott	

[Carrier's File: Claim SI-27]

EMPLOYEES' STATEMENT OF FACTS: On February 16, 1959, this Carrier required that certain signal work be performed on its Terminal Division which necessitated the augmentation of its Terminal Division signal force. On this date there were eight furloughed Terminal Division signal employees who were available to perform the work that was required to be performed. The Carrier did not recall the furloughed Terminal Division signal employees for the work on their home seniority district, but instead transferred a New Hampshire Division signal crew, who hold no seniority rights on the Terminal Division, to perform the work on the Terminal Division.

In view of the fact that New Hampshire Division signal employees who hold no seniority on the Terminal Division were transferred to do work on the Terminal Division at a time when there were eight Terminal Division signal employees on furlough, Local Chairman W. E. Ball filed the following claim with Mr. T. D. Hardcastle, Signal Supervisor, under date of April 15, 1959:

simply states that boarding car crews can be used in another seniority district "by direction of Management".

The Petitioner states that Article III, Section 5 (a), is controlling. If this be so, then Article III, Section 18, could seldom, if ever, be applied.

Article III, Section 5 (a), follows:

"(a) Except as provided in sections 14 and 17 of this Article, seniority rights of employes will, unless otherwise agreed between General Committee and Management, be restricted to

(1) A Signal Supervisor's District

(2) Relay Repair Shop Forces System."

This dispute does not involve the transfer of a man's seniority from one seniority district to another; it is simply a case where a New Hampshire Division boarding car crew was temporarily used on the Terminal Division, in accordance with the provisions of Article III, Section 18, *supra*. It should be clear to the Board that the Petitioner's claim that Section 5 (a) takes precedent over Section 18 of Article III is totally without merit.

The claim should be denied.

OPINION OF BOARD: The facts in this case are not in dispute. The Carrier transferred a boarding car crew to another seniority district, while Claimants were furloughed from the very seniority district to which the boarding crew was transferred. The Carrier relies on Section 18 of Article III of the Agreement which states that:

"ARTICLE III, SECTION 18.

Employes with headquarters in boarding cars may be temporarily transferred as provided in Section 24 of Article II of this Agreement from their seniority district to another by direction of the Management. They will retain and accumulate seniority on the seniority district from which transferred. Except for temporary service, employes will not be transferred to another seniority district unless they so desire."

Section 24 of Article II referred to above, pertains to payment of travel time outside of regular bulletin hours.

The Petitioner alleges that the Carrier, by its actions, violated the seniority rules of Article III, specifically Section 5 (a) thereof, which reads as follows:

"SECTION 5.

(a) Except as provided in sections 14 and 17 of this Article, seniority rights of employes will, unless otherwise agreed between General Committee and Management, be restricted to

(1) A Signal Supervisor's District.

(2) Relay Repair Shop Forces System."

In this case, the Claimants held seniority on the Terminal Seniority District. The boarding crew members do not hold seniority rights on the Terminal Division, but on their own Division. There is no question involved in this case as to a transfer of seniority rights from the Boarding Crew Division to the Terminal Division. That is not the issue. The issue is whether the Carrier can move such a crew into another seniority district, when such a district has furloughed employees on its roster. Does Article III, Section 18 give the Carrier this right or is such a right qualified to the extent that it may not be exercised when furloughed employees are on the roster? Section 18, taken by itself is quite clear. There are no exceptions made. When read literally, it flies in the face of the Claimants seniority rights. We must, it seems to us, look beyond the bold language of this section in an effort to determine precisely if possible, the intent of the contracting parties at the time the section was negotiated, and then to construe it in conjunction with the applicable seniority provisions.

A review of the record reveals that a letter under date of August 19, 1959, was forwarded from the organization to the Carrier, in which it was stated that Section 18 was negotiated for the purpose of permitting the Carrier to meet a situation, where additional employees were needed on a particular Seniority District, after all other employees holding seniority on such Seniority District were utilized. It was also stated in this letter that it was never the intent of the parties who negotiated the Agreement to give the employees in a crew super-seniority in each and every Seniority District to the detriment of rostered employees on a district.

If we were to agree with the Carrier's contentions in this case, we would in effect be conferring a super-seniority rating on each member of the Boarding crew in complete defiance of the seniority rights of other employees. We do not believe that Section 18 was negotiated with this intention in the minds of the contracting parties. For us to believe otherwise, would not only infringe upon, but would do violence to the seniority system and the seniority rules of this Agreement. Further, it is our considered judgment that Section 18 when written, was never meant to be invoked in a situation such as the instant one. The seniority rule is the overriding factor in this case and we accordingly sustain the claim.

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 28th day of September 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12933
DOCKET SG-12025**

The majority award candidly states that "Section 18 taken by itself is quite clear. There are no exceptions made. When read literally, it flies in the face of the Claimants' seniority rights"—and then, unfortunately, the award applies meanings other than that which is "quite clear", all in the justification that to do otherwise, would be "in complete defiance of the seniority rights of other employees . . . [and] . . . would not only infringe upon, but would do violence to the seniority system and the seniority rules of this Agreement."

Stated differently, the majority opinion seems to state that the exception to a general rule should not be applied unless it is in all degrees in conformance with the general rule. Article III, Section 18 is clear and unambiguous. The rule does not say that furloughed employees must be brought back to a seniority district before transferring a boarding car crew from another seniority district. On the contrary, the rule simply states that boarding car crews can be used in another seniority district "by direction of management." The fact that the application of a rule that is "quite clear" on its face has disturbing ramifications should not be a deterrent to its application. Article III, Section 18 is nothing more or less than an exception to the general seniority rule. That being so, it would be natural to expect a result in variance with the general rule. The singular purpose of any exception is to contradict in some manner the provisions of a general rule.

For these reasons, among others, we dissent.

**C. H. Manoogian
R. A. DeRossett
W. F. Euker
G. L. Naylor
W. M. Roberts**