

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

In behalf of furloughed Signal Helper R. F. Robinson for eight (8) hours per day at the Signal Helper rate of pay from April 14, 1959, until June 15, 1959, a total of forty-three (43) days, account the Carrier using a junior Signal Helper and a Section Laborer to work a Signal Helper position in the system rail gang during the above period.
[Carrier's File No.: B-729]

EMPLOYEES' STATEMENT OF FACTS: Mr. Mabra Garner was regularly assigned to a Signal Helper position working with Signalman J. R. Williams, Jr., on a system rail laying gang.

Signal Helper Garner was off duty account of illness from April 14, 1959, until June 15, 1959, and the Carrier recalled a furloughed Signal Helper, Mr. C. M. Edwards, to fill the temporary vacancy created by Mr. Garner's illness.

Signal Helper Edwards worked the position from April 14, 1959, until June 1, 1959, and the Carrier assigned a Section Laborer to the position from June 2, 1959, until June 15, 1959, when the regular assignee, Signal Helper Garner, returned to work.

The claimant in this dispute is Mr. R. F. Robinson, who was also a furloughed Signal Helper at the time Signal Helper Garner became ill.

Furloughed Signal Helper Robinson was senior to furloughed Signal Helper Edwards and had properly complied with the provisions of Rule 36 governing furloughed employees.

In view of the fact that Signal Helper Robinson was senior to Signal Helper Edwards and was not recalled to fill the temporary vacancy created by Mr. Garner being ill and, also in view of the fact, that the Carrier assigned a Section Laborer to fill the vacancy on certain days Mr. Garner was off due

POSITION OF CARRIER: The record shows that Claimant Robinson worked the following dates which are included in the claim:

April 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30.

May 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29.

June 1, 2, 3, 4, 5.

The record shows claimant did not work the following dates included in the claim:

June 8, 9, 10, 11, 12.

The record further shows that the Garner temporary signal helper vacancy was filled with a section laborer on the following dates:

June 2, 3, 4, 5, 8, 9, 10, 11, 12.

It will be noted from the Director of Personnel's letter of May 3, 1960, supra, that carrier offered to pay claimant for the days the temporary vacancy was worked by the section laborer which offer was refused by the General Chairman.

Attention is called to the following provisions of Rule 36:

" . . . Failure to return for temporary service will not cause forfeiture of seniority. . . ."

"Should furloughed employees desire not to return to the service for a period of less than two (2) months. . . ."

No protest was made during the time furloughed employee C. M. Edwards was used on the temporary vacancy that claimant or anyone else should have been used instead of Edwards.

Carrier submits that in view of the uncertainty which existed as to the length of time Garner would be off sick, it is reasonable to assume that claimant would not have quit his job at the General Electric Company on April 14, 1959, in order to fill the temporary vacancy of uncertain duration.

In view of the circumstances involved, carrier contends there is no proper basis for the payment the employees request be made claimant and that the offer of settlement made by carrier was both proper and equitable.

OPINION OF BOARD: Mr. Mabra Garner regularly assigned to a Signal Helper position on a system rail laying gang was off duty account of illness from April 14, 1959, until June 15, 1959, and the Carrier recalled a furloughed Signal Helper, Mr. C. M. Edwards, to fill the temporary vacancy created by Mr. Garner's illness. Signal Helper Edwards worked the position from April 14, 1959, until June 1, 1959, and Carrier assigned a Section Laborer to the position from June 2, 1959, until June 15, 1959, when the regular assignee, Signal Helper Garner, returned to work. The Claimant in this dispute is Mr. R. F. Robinson, who was also a furloughed Signal Helper at the time Signal Helper Garner became ill. He was senior to furloughed Signal Helper Edwards and had properly complied with the provisions of Rule 36 governing furloughed employees.

Rule 36 of the controlling Agreement provides, in material part:

"In the restoration of forces, employees will be recalled to service in the order of their seniority. When recalling men to fill temporary positions or temporary vacancies, if the senior laid off employee does not respond, or in case of emergency, the senior available laid off employee may be used until the senior laid off employee desiring the temporary work reports. Failure to return for temporary service will not cause forfeiture of seniority. Temporary positions or vacancies of five days or less will be filled by the senior available employee of the class of the position to be filled who is cut off or the employee reduced to a lower class who is senior, but if no employee of the class of the position to be filled is available, other available employees may be used. When it is known they will last for more than five days, the senior employee in the seniority district entitled thereto will be given opportunity to fill the position or vacancy."

Carrier did not attempt to recall Claimant, apparently because it was known that he was employed by an outside firm when the vacancy first occurred.

Claimant's right to be recalled for this service was superior to that of

The claim is sustained, but only to the extent of the actual loss in earnings that Claimant sustained on each date that either Signal Helper Edwards or the Section Laborer worked the Signal Helper position from April 14 to June 15, 1959. In other words, if Claimant's earnings in outside employment on any of these dates amounted to less than he would have earned on such date had he been recalled to Carrier's service, he shall be allowed the difference.

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 to the extent indicated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1964.