

Award No. 13707

Docket No. SG-13476

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, 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 that:

(a) The Carrier violated the Signalmen's Agreement when it issued Bulletin No. 5, dated April 17, 1961, abolishing the Assistant Signal Maintainer's position at West Knoxville, Tennessee, effective April 27, 1961, and, on the same Bulletin, advertised a Helper's position to take the place of the Assistant Signal Maintainer's position.

(b) The Carrier now be required to re-establish the Assistant Signal Maintainer's position at West Knoxville, Tennessee, and compensate C. E. McNeil for the difference in pay received as a Helper and that which he would have received as an Assistant Signal Maintainer from April 27, 1961, until the Assistant Signal Maintainer's position is re-established.

[Carrier's File: G-374-5; G-374]

EMPLOYEES' STATEMENT OF FACTS: On April 17, 1961, the Carrier issued Bulletin No. 5 which abolished the Assistant Signal Maintainer's position at West Knoxville, Tennessee, effective April 27, 1961. Bulletin No. 5 also advertised a Signal Helper's position, with headquarters at West Knoxville. The successful applicant on the Signal Helper position replaced the Assistant Signal Maintainer as he works the same territory, hours, and has the same workweek as the Assistant Signal Maintainer did previously. The Helper is also assigned to work with the same Signal Maintainer as was the Assistant Signal Maintainer. Bulletin No. 5 is Brotherhood's Exhibit No. 1.

On April 22, 1961, Local Chairman C. E. McNeil wrote Signal Supervisor J. R. Hatfield that the Carrier's action outlined in Bulletin No. 5 was a direct violation of the Signalmen's Agreement and asked that the Assistant Signal Maintainer's position be re-established. This letter is Brotherhood's Exhibit No. 2.

On April 28, 1961, the Carrier issued Bulletin No. 7 which awarded the Signal Helper's position advertised in Bulletin No. 5 to C. E. McNeil, who

The whole purpose of the classification of assistant signalman or assistant maintainer is to train employes for future use as signalmen and maintainer. The number of men in such training at any time depends on the requirements of the service. When there is a plethora of trained signalmen and maintainers, the necessity for training additional men is, of course, less.

There was no occasion or necessity for continuing the position of assistant maintainer at West Knoxville for the purpose of training and qualifying an employe for future use as a signalman or a maintainer—much less claimant McNeil. Claimant McNeil had established seniority as a signalman October 8, 1945. He forfeited signalman's seniority December 26, 1951, to remain on a permanent Helper's position at Chaska, Tennessee. He was working on position as Assistant Signal Maintainer at Etowah, Tennessee, when it was abolished December 2, 1955, at which time he went to West Knoxville to the position of assistant maintainer here involved.

Claimant had qualified as a signalman but apparently desired to work as an assistant. There obviously was no purpose of carrier continuing the assistant maintainer's position at West Knoxville for training purposes as claimant had already qualified as a signalman but had returned to the lower classification of helper.

Insofar as the applicable rules of the agreement were concerned, the position of assistant maintainer at West Knoxville was no different from assistant maintainer positions at other points.

Carrier submits in the action taken it acted within its prerogatives and in no way violated the applicable agreement. There is, therefore, no basis for the claim and same should be denied.

OPINION OF BOARD: On April 17, 1961, Carrier issued Bulletin No. 5, abolishing the Assistant Signal Maintainers position at West Knoxville, Tennessee, effective April 27, 1961 and on the same Bulletin, advertised a Signal Helpers position. Claimant, who was assigned to the Assistant Signal Maintainer's position, at the time it was abolished, bid in the Signal Helpers job under protest, requesting the abolished position be re-established. Employees allege a direct violation of the Signalmen's Agreement, particularly Rule 30 (a). Claimant was awarded the position of Signal Helper on April 28, 1961.

Rule 30(a) reads:

"The number of assistant signalmen and assistant signal maintainers on a seniority district shall be consistent with the requirements of the service and the apparatus to be installed and maintained."

The Claim as argued by the Petitioner in the submission is a departure from that offered in support of the claim on the property, namely Rule 62—Preservation of Rates:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or rendering these rules inapplicable."

Such departure, does, in effect, present a new claim for our consideration, that was not presented nor handled on the property. Such contention not having been raised on the property, may not, for the first time, be raised before the Board. (Award 13207) The claim, therefore, must 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.