

**Award No. 14162**  
**Docket No. SG-14397**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul & Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it failed to assign R. C. Smith to Signalman position advertised in Bulletin No. 42-368, dated November 12, 1962, and instead assigned the position to a junior employe, Harry E. Good, by Bulletin No. 42-369, dated November 30, 1962.

(b) The Carrier now be required to assign R. C. Smith to the Signalman position advertised in Bulletin No. 42-368.

(c) The Carrier now be required to compensate R. C. Smith for forty (40) hours per week at the pro rata rate, and for all over-time hours worked by the Signal Crew at the punitive rate, beginning November 30, 1962, and continuing until this claim has been satisfied.

(d) In the event R. C. Smith had not worked the necessary qualifying compensated days for a 1963 paid vacation prior to the date of this claim, the settlement of claim will establish the sufficient number of days to qualify.

**EMPLOYEES' STATEMENT OF FACTS:** On or about June 1, 1962, Claimant R. C. Smith was displaced from his Signal Maintainer position by a senior Signal Maintainer, R. D. Hink. Due to being displaced from his position, Claimant Smith sent the Signal Supervisor and General Chairman a telegram exercising displacement rights on Signal Maintainer position held by C. D. Wheeler with headquarters at Calder, Idaho. The telegrams dated June 4 are Brotherhood's Exhibit No. 1.

Signal Maintainer Smith did not report to work at Calder, Iowa within 10 days from the date he exercised displacement rights on the Calder position.

Smith did not, in accordance with the specific provisions of the second paragraph of Rule 48, file his address with the proper Carrier officer within ten (10) days from the date he was affected by force reduction nor did he make written application for employment every ninety (90) days and in accordance with the specific provisions of the third paragraph of Rule 48 "Failure to comply with these provisions \* \* \* will cause a forfeiture of all seniority rights unless a leave of absence has been granted" and a leave of absence had not been granted claimant Smith, therefore, he forfeited his seniority rights under the provisions of Rule 48.

Having forfeited his seniority under schedule rules several months earlier, claimant Smith had no seniority rights or employee relationship with the Carrier when the Signalmans position here involved was advertised on Bulletin No. 42-368 dated November 12, 1962 and, consequently, he had no right under schedule rules to bid therefor nor was the Carrier under any obligation to consider any such bid on the part of claimant Smith.

The Carrier submits that it is readily apparent that by the claim which they have here presented the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

The Carrier submits that there is absolutely no basis for the instant claim and we respectfully request that it be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On or about June 1, 1962, Claimant, regularly assigned as Signal Maintainer at Ellensburg, Washington, was displaced by a senior Signal Maintainer. Claimant, in turn, notified Carrier that he was exercising displacement right over a junior Signal Maintainer located at Calder, Idaho; but, Claimant failed to report for duty at Calder within 10 days thereafter. Subsequently, he bid on an advertised Signalmans position in a Coast Division Gang. Carrier awarded the position to a junior employee because, Carrier contended and now contends, that:

"Mr. Smith [Claimant] forfeited his seniority rights with the Carrier when he failed to comply with provisions of the schedule rules relating to reduction in force . . ."

Carrier cites Rules 40(a) and 48 as supporting its contention.

Rule 48 is concerned with "employees laid off by reason of force reduction". Since Claimant was not laid off by reason of force reduction, Rule 48 is not applicable.

The Agreement contains a specific Rule as to the seniority entitlements of an employee in the factual situation of this case. It is:

"RULE 41. (a) Employees whose positions have been abolished, who have been laid off by reason of force reduction, or who have been displaced, must exercise displacement rights if they desire or are required to do so by the provisions of Rule 40 within ten (10) days from date of abolishment, lay off, displacement or expiration date of leave of absence.

"(b) Employees failing to report for duty within ten (10) days from the date they exercise displacement rights, forfeit such rights and may only bid on vacancies or new positions except when prevented from doing so by reason of sickness or injury to themselves or when granted a leave of absence under provisions of Rule 44."

Rule 41(b) makes clear that Claimant did not forfeit his seniority rights, or terminate the employer-employee relationship, by failing to replace the employee at Calder within the 10 days. The penalty for the failure, as prescribed in the Agreement, was loss of the right to displace on that or any other position. However, expressly reserved to Claimant was the right to "bid on vacancies or new positions". In bidding on the advertised position in the Coast Division Gang, Claimant exercised this right. Carrier was obligated to honor the bid with recognition of Claimant's seniority. Its failure to do so was in violation of Rule 41 (b) of the Agreement. We will 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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1966.