

Award No. 14214

Docket No. SG-11984

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

## PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Article II, Section 8, and Sections 1 and 3 of Article II of the August 21, 1954 Agreement when it abolished certain positions on December 23, 1958, though the exact same positions were re-bulletined on December 22, 1958, to be re-established on January 5, 1959, which resulted in loss of pay, reduction in pay, and extra expenses incurred by employees due to being forced to displace on other positions or becoming furloughed employees.

(b) Because of the violations cited in the above paragraph, the Carrier now be required to compensate the employees as listed below:

George Wilhelm	—	64 hrs. @\$2.56	\$163.84
Elias Benjamin	—	64 hrs. @ 2.452	156.93
Glen Arnold	—	40 hrs. @ 2.26	90.40
Joseph Bonchonsky	—	64 hrs. @ 0.12	7.68
Norman Buckman	—	64 hrs. @ 0.30	19.20
Fred Lawson	—	64 hrs. @ 0.06	3.84
Walter Kowala	—	8 days board	36.00
John Remakis	—	8 days board	36.00
Joseph Bonchonsky	—	8 days board	36.00
James F. Keim	—	64 hrs. @ 2.26	144.64

R. M. Frederick	—	64 hrs. @ 0.06	3.84
H. J. Sandt	—	40 hrs. @ 0.06	2.40
R. T. Kempsey	—	40 hrs. @ 0.30	12.00
F. P. Bercaw	—	64 hrs. @ 0.06	3.84
F. J. Comerford	—	64 hrs. @ 0.30	19.20
J. Schmidinger	—	64 hrs. @ 2.56	163.84
H. McPherson	—	64 hrs. @ 2.26	144.64
A. Onley	—	64 hrs. @ 2.56	163.84
P. Roccaro	—	40 hrs. @ 2.56	102.40
L. R. Thorpe	—	64 hrs. @ 0.12	7.68
H. Markow	—	64 hrs. @ 0.06	3.84
J. McCarty	—	travel time and car mileage between Sayre, Pa., and Slatington, Pa., plus meals and lodging for 6 days.	
L. R. Thorpe	—	travel time and car mileage between Easton, Pa., and Bellewood, N. J., for six days.	
R. M. Frederick	—	travel time and mileage between Easton, Pa., and Bellewood, N. J., for 6 days.	
H. J. Sandt	—	travel time and car mileage between Easton and Allentown, Pa., for 4 days.	
R. T. Kempsey	—	travel time and car mileage between Easton and Allentown, Pa., for 2 days.	
P. R. Behney	—	travel time and mileage between Bellewood and Manville, N. J., for 6 days.	
M. J. Sar	—	travel time and mileage between Easton, Pa., and Bellewood, N. J., for 4 days.	
A. J. Benkovic	—	travel time and car mileage between Allentown, Pa., and Bellewood, N. J., for 6 days.	
M. Popik, Jr.	—	travel time and car mileage between Oak Island and Manville, N. J., for 6 days.	

D. Robbins

— travel time and car mileage between Slatington, Pa., and Bellewood, N. J., for 4 days.

F. Sutton

— travel time and car mileage between South Plainfield and Manville, N. J., for 6 days.

**EMPLOYEES' STATEMENT OF FACTS:** This dispute involves claims for several signal employees for pay account time lost, difference in rate, and/or expenses, due to the Carrier abolishing positions effective with the close of work day December 23, 1958, and by bulletin dated prior to the effective date of the abolishment, re-established the very same positions effective January 5, 1959. It is a combination of separate claims that were processed by each of the Local Chairmen on their respective seniority districts, but which were combined by the General Chairman in his appeal to Chief of Personnel, the highest officer of the Carrier designated to handle such disputes. Although the dispute originated in separate claims on different seniority districts, the issue involved is the same. The issue is the contention of the Brotherhood that the positions were not actually abolished, nor were forces reduced within the intent and meaning of the agreement, but that work was temporarily suspended in order to evade the payment of holiday pay.

On December 17, 1958, Mr. H. J. Peney, Supervisor of Signals and Telegraph, issued a notice abolishing five positions effective with the close of work day December 23, 1958. That notice has been reproduced and is attached hereto and identified as Brotherhood's Exhibit No. 1.

Under date of December 22, 1958, Mr. Peney issued bulletins advertising the positions that were to be abolished on December 23, 1958. Three of the bulletins involved have been reproduced and are attached hereto and identified as Brotherhood's Exhibit Nos. 2, 3 and 4.

Similar notices and bulletins involving other positions were issued. We have merely chosen our Exhibit Nos. 1, 2, 3 and 4 as typical examples.

The claim on behalf of Messrs. Wilhelm, Benjamin, Arnold, Bonchonsky, Buckman, Lawson, Kowala and Remakis was initially presented by Mr. U. R. Sharick, Local Chairman, to Mr. J. E. Rubery, Supervisor of Signals and Telegraph, on February 20, 1959, on the basis of Sections 1, 3 and 8 of Article 2 of the current Signalmen's Agreement. The amounts claimed were for the time actually lost and the difference in rates of pay that the employees received by having to take a position with a lower rate, and for expenses they incurred after being forced to move to a new location. In denying this claim, Mr. Rubery stated, in part, "Your claim is denied and there is no merit to article and sections which you claim were violated. It is one of the prerogatives of management that they may abolish positions at their discretion."

On March 7, 1959, Local Chairman Sharick appealed Mr. Rubery's decision to Mr. F. J. Cavan, Division Engineer, who, on March 11, 1959, denied the appeal, stating, in part, "I concur in the opinion of Supervisor Rubery that there was no violation of rules; therefore, I cannot recommend payment of the claims referred to."

during the early part of January, 1959. With this in mind, Carrier re-bulletined the abolished positions on December 22, 1958 to be re-established on January 5, 1959.

**OPINION OF BOARD:** This is a dispute between the Brotherhood of Railroad Signalmen and the Lehigh Valley Railroad Company. It arose when the Carrier by bulletin published December 17, 1958, gave notice of the abolishing of five positions of Leading Signal Maintainer as of the close of the workday on December 23, 1958. The elements for controversy were complete when the Carrier by bulletin on December 22, 1958, advertised the same five positions about to be abolished to be filled, applications to be received until noon January 2, 1959.

The Brotherhood contends that since the same positions were re-established by bulletins dated prior to the effective date of the abolishment that the positions were not in fact abolished, but only that work was temporarily suspended in order to evade the payment of holiday pay for Christmas and New Year's.

That is probably a point well taken even though vehemently denied by the Carrier, but it does not resolve the matter in favor of the Brotherhood, whatever the equities. The parties were bound by an Agreement which did not place any prohibition on the abolition of positions as done here and it is a truism that management rights of the Carrier not contracted away are rights retained. It only prescribed procedure to do so, i.e., five days' written notice of intent to abolish (Article IV, Section 4), and the Carrier did so to the letter.

The Brotherhood relies on Article II, Section 8, as a guarantee rule which was violated by the acts of the Carrier. While it may so be, it only guarantees a forty-hour week for regularly established daily working hours, not continuous employment, and once the posts were abolished, there were no longer "regularly established daily working hours" to which it may be applied.

As to consideration of the right to holiday pay for the two holidays, Article II, Section 1, specifies that those eligible for such pay be "regularly assigned" and Section 3 requires that they work on the workdays immediately preceding and following each such holiday. Since the positions were abolished prior to Christmas and re-opened after New Year's, the effected employes could not have been regularly assigned on the workday after Christmas or the workday before New Year's, and are thus ineligible to receive such holiday pay.

This practice of the Carrier in laying off employes during Christmas and other holiday periods appears to have been one of long standing in the industry, and has been dealt with in numerous awards, most notably 10006 and 11245, directly in point, and 11178 dealing only with the question of holiday pay.

It is concluded, therefore, that the claim should not be sustained.

**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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1966.