# Award No. 14685
# Docket No. SG-14127

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

John H. Dorsey, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN

## SOUTHERN PACIFIC COMPANY
## (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated and continues to violate the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rules 45 and 70 and the Memorandum of Agreement dated 10-11-61 relating to the movement of forces to the CTC construction work on the San Joaquin Division, Bakersfield to Fresno, California.

(b) Mr. T. Gregory be paid his regular wages as an Assistant Signalman, retrocative to January 8, 1962, and continuing until such time as he is recalled to service in the Sacramento Signal Shop—as per Rule 45 of the current Signalmen's Agreement.

(c) Mr. T. Gregory be given a date as Assistant Signalman in the Sacramento Signal Shop as of December 18, 1961.

(d) Mr. T. Gregory be allowed three (3) days traveling pay and actual traveling expenses from El Paso, Texas, to Sacramento, California, as provided for in the Memorandum of Agreement dated 10-11-61 relating to the movement of Signal Forces to the CTC construction — Bakersfield to Fresno, California.
[Carrier's File: SIG 61-33]

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. T. Gregory, entered the service of this Carrier in August, 1945, as a Signal Helper in the El Paso, Texas, Signal Shop. He has a Signal Helper seniority date of 8-1-45, and an Assistant Signalman seniority date of 5-1-46, on the Rio Grande Division, which includes the El Paso Signal Shop.

Because of his physical condition, Mr. Gregory requested that he be permitted to waive his right to promotion to Signalman, remain in the Assistant Signalman class, and be restricted to shop work. That request was granted,

sion, concerning work which was to be available to Rio Grande Division signal gang being organized to work on CTC construction on the San Joaquin Division under provisions of Memorandum of Agreement dated October 11, 1961, attached hereto as Carrier's Exhibit C. In response thereto, Claimant advised under date of November 2, 1961, that "I am not able to do gang work, but would like to have a job in any shop in California, so please let me know as soon as possible if there's an opening in any of them."

Subsequently, on February 6, 1962 (see Carrier's Exhibit D), Claimant was recalled to service at El Paso Signal Shop, but before his actual return to work, due to change in conditions, this recall was rescinded (Carrier's Exhibit E).

3. By letter dated March 6, 1962 (Carrier's Exhibit F), Petitioner's local chairman presented claim to Carrier's Division Superintendent essentially the same as that contained in Statement of Claim hereinabove based on the contention that Claimant is entitled to transfer to and work in the Sacramento Signal Shop. Carrier's Division Superintendent denied the claim by letter of March 26, 1962 (see Carrier's Exhibit G). Petitioner's Local Chairman gave notice of further handling in his letter of April 1, 1962 (Carrier's Exhibit H), and the claim was appealed to Carrier's Assistant Manager of Personnel by Petitioner's General Chairman's letter of April 4, 1962 (Carrier's Exhibit I). Carrier Assistant Manager of Personnel denied the claim by his letter of June 12, 1962 (Carrier's Exhibit J). Petitioner's General Chairman gave notice of further handling by the Grand Lodge in his letter of June 13, 1962 (Carrier's Exhibit K).

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant holds seniority as an Assistant Signalman from May 1, 1946, on the Rio Grande Division which includes the El Paso Signal Shop. He worked in that Shop with that classification until 1960 when he was furloughed because of a force reduction. The issue is whether he had the contractual right to assignment to an Assistant Signalman's position other than the one he held in the El Paso Signal Shop. The issue arises from the following:

Upon completion of Claimant's basic training period the parties entered into an agreement relative to Claimant, dated May 31, 1951, which in pertinent part reads:

> "In conference it was agreed that, in consideration of Mr. Gregory's present physical condition, the provisions of Rule 31 (d) of the agreement covering employes of the Signal Department, as it related to promotion to position of signalman or signal maintainer, would be waived in his particular case, and he would be permitted to remain **in his present position** of assistant signalman. It was further understood that all other rules of the current agreement shall remain applicable to Mr. Gregory **during his retention** of said position, and that in the event his physical condition improved to the extent that it was determined he could qualify for promotion to position of signalman or signal maintainer and a position was available, the foregoing waiver would terminate." (Emphasis ours.)

The cited Rule 31 (d) reads:

"(d) Promotion At End Of Four Years' Training. At expiration of the basic training period, consisting of eight periods of 130 eight-hour days of work each, overtime excluded, as assistant signalman or assistant signal maintainer, an employe shall be promoted to a position of signalman or signal maintainer if a vacancy or new position is avaliable. If position is available, promotion must be accepted. If no position is available, such assistant shall continue at the highest assistant's rate of pay until it is possible to promote him to a position of signalman or signal maintainer. If position is available and an assistant signalman or assistant signal maintainer, after completing the basic training period refuses promotion, he shall be removed from the service. . . ."

The issue narrows to whether the waiver in the May 31, 1951, agreement extends to all positions of Assistant Signalman or is confined to the particular position he held in that classification at the time the agreement was executed. The unambiguous wording of that agreement — "in his present position . . . said position" — makes clear that the waiver pertains only to the particular position Claimant held on May 31, 1951; and, further, except while he held that position all rules of the Agreement remain applicable to Claimant.

Inasmuch as Claimant admits that his physical condition, at the time the Claim herein was initiated, continued to prevent him from performing the duties of Signalman or Signal Maintainer as mandated in Rule 31 (d); and, since we have found that the waiver applied only to a particular position, we will deny 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 Employes involved in this dispute are respectively Carrier and Employes 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 29th day of July 1966.

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