Award No. 14873
Docket No. SG-14460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

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 and Pacific Railroad Company that

(a) The Company violated the current Signalmen's Agreement, as amended, particularly Rule 60, and Rule 12(b) of the Vacation Agreement, when it did not appoint the senior employe to fill the position of Signal Foreman B. R. Lundberg who was on vacation from July 9-14, inclusive, 1962.

(b) Mr. M. E. Seleskie be paid the Foreman's rate of pay from July 9-14, inclusive, 1962.

EMPLOYES' STATEMENT OF FACTS: This dispute is a result of the Carrier assigning a junior employe to relieve the Foreman of a signal gang from July 9, to July 14, 1962, inclusive, when a senior employe, who was available and qualified, desired to be used for such relief work.

Signal Foreman B. R. Lundberg was on vacation from July 2nd through July 14th, 1962. During the first week, July 2nd through July 7th, Leading Signalman Nelson was used to relieve his position. However, Mr. Nelson took his vacation beginning July 9, so Carrier assigned Signalman M. G. Barton to relieve the position during the remaining week of Foreman Lundberg's vacation.

Signalman M. E. Seleskie who is senior to Mr. Barton desired to be used during that second week, but Carrier refused to do so.

Neither the Claimant nor the junior employe have seniority in the Foreman Class, but Claimant Seleskie has in excess of three (3) years more

Signal Foreman B. R. Lundberg qualified for, was assigned and granted two (2) weeks vacation with pay as follows:

Monday	July	2,	1962
Tuesday	"	3,	"
Wednesday	"	4,	"
Thursday	"	5,	"
Friday	"	6,	"
Saturday	"	7,	"
Monday	"	9,	"
Tuesday	"	10,	"
Wednesday	"	11,	"
Thursday	"	12,	"
Friday	"	13,	"
Saturday	"	14,	"

Under the provisions of the Non-Operating Employes Vacation Agreement, as amended, the Carrier is privileged to hire vacation relief employes to fill positions made vacant by vacationing employes. In other words, the Carrier could have, had it so desired, properly hired a vacation relief employe to fill Signal Foreman Lundberg's position during the aforementioned two (2) week period he was absent therefrom on vacation. However, such a vacation relief employe was not utilized in the instant case and Leading Signalman G. A. Nelson was used to fill Signal Foreman Lundberg's position during the first week Signal Foreman Lundberg was absent therefrom on vacation, i.e., from July 2 through July 7, 1962.

However, because of Leading Signalman Nelson being scheduled to begin his vacation on July 9, 1962, it became necessary to select someone else to fill Signal Foreman Lundberg's position during the second week of his vacation (July 9 through July 14, 1962), therefore, Signalman M. G. Barton, who had been working in the signal crew involved for quite some time and as a result was thoroughly acclimatized and fully qualified, was utilized therefor.

Claimant Seleski was a new member of the signal crew with which we are here concerned, having transferred into said crew on or about June 1, 1962 or, in other words, only about 20 working days prior to the time Signal Foreman Lundberg went on vacation, therefore, it was felt that he had not been with the crew a sufficient length of time to properly supervise and lay out the work thereof or, in other words, it was felt that his utilization as relief Signal Foreman would adversely affect the progress of the work, and in view thereof, claimant Seleski was not, for the best interests of all concerned, including himself, used to fill Signal Foreman Lundberg's position during the second week he was absent therefrom on vacation, i.e., July 9 through July 14, 1962.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. D. E. Twitchell, General Chairman, under date of December 27, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose as a result of Carrier assigning a junior employe to relieve the foreman of a signal gang from July 9 to

July 14, 1962 inclusive, when Claimant, a senior employe, was available and desired to be used for such relief work. Neither the Claimant nor junior employe had seniority in the Foreman Class. Claimant had in excess of three more years seniority in the Signalman Class than the junior employe appointed by Carrier to fill the regular Foreman's vacation period. However, the Claimant had only worked with this particular signal gang for a period of 20 to 25 days. The record discloses that no conference was held by the parties on the property; nor was a conference requested by either of the parties.

Carrier requests that this claim be dismissed for the reason that no conference was held on the property and contends that therefore, this Board is without jurisdiction in the matter. Carrier bases this contention on Section 2 (First), (Second) and (Sixth) of the National Railway Labor Act, as follows:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.
>
> "Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

A review of Awards determining this question reveals authority on both sides of the issue. Awards 10675 (Ables), 10567 (La Belle) and 12853 (Coburn) held that lack of a conference on the property did not defeat jurisdiction of this Board. However, the more modern awards such as Awards 10852 (McGrath), 11737 (Stark), 13509 (Moore) and 13721 (Wolfe) held that a conference on the property is mandatory in order to vest this Board with judisdiction.

It appears that the more recent awards have firmly established a mandatory duty of the parties to hold a sit down, face to face conference prior to submitting a dispute to this Board.

It appears that in view of the long history of conflicting awards on this subject, all parties have known, or should have known that the overwhelmingly better procedure would be to require a conference on the property prior to submission of a claim to this Board. It further appears to this Board that the Carrier is under no duty to perfect the claim of an employe by making request for a conference. It cannot be said that Section 2, Sixth of the National Railway Labor Act makes any requirement on the Carrier to aid the Claimant in his prosecution of the claim; nor on the Claimant to assist Carrier in the defense of a claim.

This Board is a creature of Statute; its powers are defined and limited by Statute. It is powerless to enlarge upon any statutory grant. Section 2, Second of the National Railway Labor Act — in clear, concise language — calls for a conference of the parties on the property prior to submission of a claim to this Board. Section 2, Sixth of this act does not in any way alter the mandatory provision of Section 2, Second; it merely gives to either party the right of requesting a conference and imposes a time limit within which to confer after a request has been made.

No matter how futile a conference may be, a conference must be held on the property prior to submision of a claim to this Board. Otherwise, this Board has no right to consider the claim in question.

For the foregoing reasons, this claim will not be considered on its merits.

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.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1966.

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