Award No. 15359
Docket No. SG-13239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

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 the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions) particularly Rules 42 and 70.

(b) Mr. A. M. Dickey be paid six (6) cents per hour for each hour that he receives compensation as Signalman after December 30, 1960, and continuing until such time as he is returned to his Leading Signalman position in Signal Gang Number 2 at Martinez, California.

[Carrier's File: SIG 130-5, S-42-3-101]

EMPLOYES' STATEMENT OF FACTS: Prior to the time of this dispute arose, Signal Gang No. 2 consisted of one (1) employe in seniority Class 2 (Signal Foreman) and nine (9) employes in seniority Class 3 (Division Signal Inspectors, Assistant Signal Shop Foreman, Leading Signalmen, Leading Signal Maintainers, Signalmen, and Signal Maintainers).

Two of the employes in Class 3 were classified as Leading Signalmen, and the other seven in that class were classified as Signalmen. Though Leading Signalmen receive 6 cents per hour more than Signalmen, they are in the same seniority class.

For ready reference, we hereby list the names, seniority dates in Classes 2 and 3, and the classifications of these gang employes:

Name	Class 2	Class 3	Classification
Henry R. Phillips	March 3, 1948	Feb. 2, 1926	Foreman
John A. Oglesby		Dec. 13, 1948	Signalman
Floyd Howell, Jr.		Nov. 5, 1950	Leading Signalman
Al M. Dickey		Jan. 12, 1953	Leading Signalman
Ronald E. Stamps		Oct. 24, 1955	Signalman
Lee R. Hicks		Sept. 18, 1956	Signalman
Kenneth E. Moore		Oct. 2, 1958	Signalman
Roy Cross		Oct. 2, 1958	Signalman
Tony W. Eaves		Oct. 20, 1958	Signalman
James H. Finley		Aug. 3, 1959	Signalman

The Signalmen's Agreement, as amended, bearing an effective date of April 1, 1947 (reprinted April 1, 1958 including revisions)is, by reference thereto, made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employes represented by the Petitioner, having effective date of April 1, 1947 (reprinted April 1, 1958, including revisions), a copy of which is on file with the Board and is hereby made a part of this submission.

2. Prior to December 30, 1960, Signal Gang No. 2 at Martinez, California, consisted of the following:

Number of Men	Class
1	Signal Foreman
2	Leading Signalman
7	Signalman

Effective that date one Leading Signalman position and one Signalman position on Gang No. 2 were abolished (see Carrier's Exhibit A). The two positions abolished were those of the junior man in the Leading Signalman class and the junior man in the Signalman class.

Claim was originally submitted by Petitioner's local chairman in behalf of claimant based on the allegation the above handling constituted a violation of Rule 42 of the current agreement.

3. Correspondence which passed between the Local Chairman and carrier's division officers in connection with this claim is reproduced as Carrier's Exhibit B; and correspondence passing between the General Chairman and carrier's Assistant Manager of Personnel is reproduced as Carrier's Exhibit C.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to the time this dispute arose, Signal Gang No. 2 consisted of one employe in seniority Class 2 (Signal Foreman) and nine employes in seniority Class 3 (Division Signal Inspectors, Assistant Signal Shop Foreman, Leading Signalmen, Leading Signal Maintainers, Signalmen, and Signal Maintainers). Two of the employes in Class 3 were classified as Leading Signalmen, and the other seven in that class were classified as Signalmen.

Effective at the close of work on December 30, 1960, Carrier abolished the Leading Signalman position held by Al M. Dickey (junior Leading Signalman on Gang 2) and the Signalman position held by the junior Signalman on Gang 2. Leading Signalman Dickey displaced a junior man assigned as Signalman on Gang 2, at the same time protesting that his Leading Signalman position should not have been abolished.

This claim that Al M. Dickey be paid 6 cents per hour for each hour that he receives compensation as Signalman after December 30, 1960, and con-

tinuing until such time as he is returned to his Leading Signalman position in Signal Gang 2 at Martinez, California, is expressly based on the second sentence of Rule 42 of the controlling agreement which reads:

> "When force is reduced in a gang, the position held by the junior man in the class will be abolished."

Petitioner contends that the word "class" as used in this sentence means "seniority class," and, therefore, the position of Leading Signalman Dickey could not be properly abolished as long as Signalman positions on Gang 2 held by men junior to Dickey in seniority Class 3 were not abolished.

Carrier contends that the word "class" as used in Rule 42 refers to any one of the distinct classes defined in Article 1 of the agreement.

Carrier asserts that:

> "Whenever the word class is used throughout the current agreement, it is obvious that it refers to the distinct classes as defined in Article 1 (Classification) unless the context of the particular rule where the word is used necessarily indicates otherwise. * * * Rule 42 contains nothing that suggests the term class as used in the first paragraph thereof is to be construed as 'seniority class' instead of merely any distinct class as defined in Article 1 of the current agreement."

Carrier has given us a brief account of the Section 6 Notice served by the Employes as well as the negotiations which resulted in the agreement to add the involved sentence to Rule 42, effective January 1, 1958. From Carrier's account it is obvious that the Employes intended the word "class" in this sentence to mean "seniority class," and it appears that Carrier was aware that such was the Employes' intent; therefore, we must adopt that interpretation of the word "class" in this particular sentence even though this word has been given a different meaning in some of the other rules of the agreement. (Compare Awards 13262, 12936, and 15151.)

True, Carrier has shown that in the particular situation which gave rise to this claim it would have been necessary to first abolish several Signalman positions in order to abolish the Leading Signalman position, were this sentence in Rule 42 to be applied in terms of seniority class. But there is no evidence that this would be the universal result of such interpretation in all situations, nor is there convincing or conclusive evidence in the record that such result (at least in some cases) was not contemplated.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15359, DOCKET SG-13239 (Referee Stark)

We respectfully submit that on two different grounds this Award is arbitrary and invalid:

I.

The basic ruling is not supported by evidence. All relevant evidence in the record indicates that the parties intended the word "class" in the involved sentence of Rule 42 to mean any one of the distinct classes of employes defined in Article 1 of the agreement. The evidence consists of relevant provisions in the agreement itself and undenied assertions of Carrier regarding the history of the agreement and past practices thereunder.

The involved sentence uses the word "class" without the qualifying word "seniority." The rules of the agreement referring to seniority class make that fact clear by either using the term "seniority class" or by a context which compels the conclusion that seniority class was intended.

Had the parties intended to refer to seniority class in this sentence, they would have used that term, for the context clearly repels rather than compels the conclusion that seniority class was intended. Construing the word "class" in this sentence as meaning "seniority class" leads to absurd results. Both on the property and in its submission to the Board Carrier has noted that if the Employes' interpretation of this sentence is adopted, it will be necessary in many cases for Carrier to go through the pointless formality of abolishing all signalmen positions on a gang in order to abolish one leading signalman position that is no longer required. This would be true in every case where the senior men on a gang hold the leading signalmen positions, and that is normally the situation. Even the Employes in the record recognize that this result would not be reasonable.

The Award expressly recognizes that under the interpretation therein adopted, the procedure described by Carrier would be required in some cases, and it tacitly recognizes the lack of reason in such procedure by brushing the matter aside with the observations that this would not necessarily be the "universal result" and that there is no "convincing or conclusive evidence in the record that such result . . . was not contemplated."

The history of the agreement further establishes that the parties intended the word "class" in this sentence to mean a class in the traditional

sense, as defined in the Classification Rules, and not "seniority class" as specifically defined in Rule 32.

The record shows that the original agreement between the parties did not contain a definition of seniority class that differed in any way from the definitions of the individual classes in the Classification subdivision of the agreement. Whenever the word "class" was used in any rule of the original agreement it meant just one thing, any one of the individual classes defined in the Classification subdivision of the agreement.

When the current agreement was negotiated in 1947, Rule 32 was amended to include a specific definition of "seniority class" whereby several of the distinct and traditional classes listed in Article 1 of the agreement were grouped together as one "seniority class." At the same time, the parties revised some of the rules of the agreement and where th word "class" had theretofore been used, they inserted the word "seniority class." (See especially the rules on "Seniority Rosters" and "Displacements.") However, the parties abstained from substituting the words "seniority class" in lieu of the word "class" in some other rules, including Rule 42 (Reduction in Force).

Under universally accepted rules of construction, when the parties carried the word "class" forward into the new agreement, that word carried with it the same meaning attributed to it in the prior agreement unless the specific word "seniority" was inserted to qualify the same or unless the context was such as to compel the conclusion that seniority class was involved.

A past practice of construing the word "class" in other rules of the current agreement as meaning the distinct classes defined in Article 1 of the agreement rather than seniority class was conceded by the Employes on the property. In denying the claim, Carrier's highest officer stated:

> "Rule 42 contains nothing that suggests the term class as used in the first paragraph thereof is to be construed as 'seniority class' instead of merely any distinct class as defined in Article 1 of the current agreement. To the contrary, the absurd result which you must admit would necessarily flow from interpreting the word class in Rule 42 as meaning 'seniority class' constitutes sufficient reason for rejecting that interpretation. Furthermore, **this interpretation of this word class in that rule would be inconsistent with the meaning heretofore attributed to that word in applying other rules of the agreement.**" (Emphasis ours.)

The Employes were honest about the matter. They did not deny that the foregoing assertions regarding past practice were true either in their correspondence on the property or in their submission to this Board. We must therefore accept this statement as an admitted fact.

From the foregoing it is clear that the word "class," standing alone in any rule of this agreement, refers to any one of the traditional classes defined in Article 1, and this is unavoidably true unless the word is used in some peculiar context which compels the conclusion that the word refers to seniority class. See our consistent **Awards 15151** (Hall), **13262** (Moore), **12936** (Yagoda), denying claims of this Petitioner involving the meaning of the word "class" in other provisions of the agreement.

This Award does not take issue with the prior Awards or with the principle involved as it applies to rules of the agreement other than the particular sentence with which we are here concerned.

This sentence was added to Rule 42 by a separate agreement effective January 1, 1958. By using the word "class" instead of the words "seniority class" in this new rule, they manifested an intention to use the word in the traditional sense of a class as defined in Article 1 of the agreement, and not in the sense of seniority class. The Referee was arbitrary in refusing to recognize this fact.

II.

The findings upon which the Award is based establish that Claimant sustained no loss. He would have been in no worse position had Carrier followed the procedure which the findings say should have been followed. Therefore, sustaining the claim for monetary allowance cannot be justified under the law even if the erroneous interpretation of the word "class" is permitted to stand.

Rule 70 of the controlling agreement provides that an employe "who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss." The parties have expressly incorporated in their agreement the established law of damages applicable to breach of contract, and under the law this Board is obligated to apply that rule. We cannot properly sustain a monetary demand which would place the Claimant in a better position financially than he would have occupied had the agreement been complied with. This Award affirmatively finds that Carrier was not prohibited from abolishing positions of signalmen held by members of the gang junior to all lead signalmen concurrent with abolishing the position of the junior lead signalman, thereby ultimately accomplishing the appropriate change in the makeup of the gang. Since there is clearly nothing in the agreement that would have prevented Carrier from following that procedure, and Claimant would have been in no better position had Carrier done so, it is obvious that Claimant sustained no loss as a result of the more sensible procedure which this Award finds was in violation of the agreement. As long as a permissible procedure was open to Carrier and following that procedure would have placed Claimant in the same relative position, the Board lacks jurisdiction under this agreement to enrich the Claimant by sustaining his monetary demand.

The Referee recognized this fact with reference to two of the Claimants in the companion claim disposed of by Award 15360. In view of his express ruling that Carrier is not prohibited from abolishing signalmen positions held by junior employes, his failure to apply the same principle to all cases cannot be justified.

For these reasons, we dissent.

G. L. Naylor
R. E. Black
T. F. Strunck
P. C. Carter
G. C. White

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