

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Don Hamilton, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILROAD SIGNALMEN****THE DENVER UNION TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Denver Union Terminal Railway Company:

That Signalman K. E. Persichetti be paid the time and one-half rate for December 9, 10, 16 and 17, 1961; the overtime rate plus his regular daily rate for December 11, 12, 18 and 19, 1961; and the pro rata rate for December 13 and 14, 1961.
[Carrier's File: 018.1]

EMPLOYEES' STATEMENT OF FACTS: Claimant K. E. Persichetti holds a regularly assigned position designated as "Signalman No. 5" on the Denver Union Terminal. His regularly assigned tour of duty is Monday through Friday; his regularly assigned hours are from 7:00 A.M. to 11:30 A.M.—12:00 Noon to 3:30 P.M.; his regularly assigned rest days are Saturdays and Sundays. The above is shown in the following bulletins which advertised and awarded the position held by Claimant:

"THE DENVER UNION TERMINAL RAILWAY COMPANY

August 29, 1961
Denver, Colorado
B-11

BULLETIN NO. 3
TO EMPLOYEES CONCERNED:

The following position is hereby advertised for bids in accordance with Signal Department Employees Agreement:

Title of Position:	Signalman No. 5 (vacated by A. A. Coupland)
Rate of Pay:	\$2.73 per hour
Tour of Duty and established meal period:	7 A.M.—11:30 A.M. and 12 Noon—3:30 P.M.
Regular rest days:	Saturday and Sunday

As shown by the above-quoted correspondence, this claim has been handed up to and including the highest officer of the Carrier designated by the Brotherhood on the property, Carrier to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of September 1, 1949, as amended, which is by reference thereto made a part of the record.

CARRIER'S STATEMENT OF FACTS: Signalman Persichetti was assigned to Signalman Position No. 5 September 7, 1961 after being successful applicant to bulletin advertising position for bid. He was used as relief as provided for by sub-paragraph No. 4 of paragraph (f) of Rule 20, which provides that Position No. 5 will make reliefs and assume the hours, duties and rest days of the employee he is assigned to relieve. He was so compensated.

OPINION OF BOARD: The only defense to this claim asserted by Carrier in stating its "position" to the Board is that the claim is barred by the provision of Article V, 1 (b) of the National Agreement of August 21, 1954, because the Employee did not notify Mr. Byrd, to whom the claim was initially submitted, that his decision disallowing the claim was rejected. This defense was never asserted by Carrier during handling on the property, but was asserted for the first time in Carrier's submission to this Board. Petitioner appeals from Mr. Byrd's decision to the highest officer who disallowed the claim on its merits. Since Carrier failed to assert this defense on the property, the defense is barred. See Award 9393 (Hornbeck), 12092 (Wolf), 13652 (Engelstein), 13755 (Coburn), National Disputes Committee Decisions 5, 10, 24, among many others.

The only defense which Carrier asserted on the property is stated as follows in the Manager's letter of March 2, 1962:

"Persichetti was assigned to Position No. 5 by bulletin dated September 7, 1961, and he was used as relief as provided for in sub-paragraph (4) of paragraph (f) of Rule 20, which provides that Position No. 5 will make reliefs and will assume the hours, duties and rest days of the employee he is assigned to relieve. He relieved Miller on the position that we had bulletined and assigned, working on the third trick . . ."

In view of Carrier's admission in its rebuttal that Miller was "assigned" to and worked Position 11 "pending assignment by bulletin" on all dates of claim prior to December 15, 1961, and was assigned by bulletin to that position on December 15 and subsequent dates, it is clear that Claimant was not relieving Miller on Position 4 on the claim dates.

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 Employee involved in this dispute are respectively Carrier and Employee 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 9th day of March 1967.