

Award No. 15603
Docket No. SG-15477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 411, 501(a) and 506, when it failed and/or refused to assign senior bidder LeRoy Harley to the signal maintainer position at Waggoner, Illinois, as advertised on Bulletin No. 21 of July 19, 1963.

(b) Carrier be required to assign Mr. Harley to that position and compensate him for all time, including any and all overtime, that a junior employee is permitted to work the Waggoner signal maintainer position.

(c) Carrier also be required to apply Rule 814 and compensate all employees involved for any loss of pay, and any and all expenses incurred by each individual as a result of the Carrier improperly assigning other than the senior bidder.

(d) This claim to continue from the time the junior bidder was assigned until the senior bidder is assigned in accordance with the Signalmen's Agreement.

[Carrier's File: 135-192-101 Spl.; Case No. 182 Sig.]

EMPLOYEES' STATEMENT OF FACTS: Mr. LeRoy Harley, the claimant named in paragraphs (a) and (b) of our Statement of Claim, was the regularly assigned Signal Maintainer at Alhambra, Illinois, when he became General Chairman for this Organization in September, 1959. While Mr. Harley spends most of his time on Organization work, he has performed service for the Carrier approximately two days per month since he became General Chairman.

After Mr. Harley became General Chairman, his Signal Maintainer position at Alhambra was advertised as a temporary vacancy and assigned on that basis to another employee.

cago each month since 1959, for which the company has allowed him a day's pay at the rate of the position at Alhambra, Illinois and reasonable expenses incurred, in connection with attending these meetings.

On July 19, 1963, the company posted Bulletin No. 21, advertising a position of signal maintainer with assigned headquarters at Waggoner, Illinois (Bulletin attached as Exhibit B). The general chairman placed a bid for this position. The company wrote him on July 29, 1963, asking for confirmation of his intent to relinquish his rights as general chairman as outlined in Rule 411 of the agreement. The general chairman did not respond to the request, and on August 8, 1963, the company notified him that since he had not relinquished his position as general chairman, he was not entitled to the position (letter attached as Exhibit C). It was awarded to the next oldest bidder.

The general chairman progressed a claim alleging he was entitled to the position advertised in Bulletin No. 21, and requested that he be compensated for all time a junior employe was permitted to work the position. The claim was declined at each step of the appeal procedure as being without contractual basis. Copies of relevant correspondence are attached as Exhibits D through L. The agreement between the parties dated August 1, 1958, is by reference made a part of this Statement of Fact.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was the regularly assigned Signal Maintainer at Alhambra, Illinois, when he became General Chairman for the Petitioner in September, 1959. Rule 411 of the controlling Agreement, which reads as follows, spells out the employer-employe relationship upon acceptance of such an official position:

"Employes promoted to official positions with the Carrier or transferred to positions not covered by other employe agreements and employes accepting official positions with the Brotherhood of Railroad Signalmen of America, serving on Commissions or Bureaus, or holding public office, shall retain and continue to accumulate all seniority. In event they voluntarily relinquish such positions, they will have a right only to bid on permanent bulletined positions, and if assigned will be required to accept and actually work on an assignment under the agreement for a period of 90 work days. Failing to work on an assignment for 90 work days, he will forfeit seniority in all classes and be considered as having resigned from the service. Except in case of discharge, within thirty days after release from such positions, they may exercise displacement rights in accordance with Rule 405. If discharged, may only bid on permanent bulletined positions."

It is undisputed that under this Rule an employe accepting an official position with Petitioner vacates ownership of the particular position he held immediately prior to the acceptance; and, the Agreement prescribes how he may exercise his seniority rights when his tenure in the official position terminates.

While Petitioner and Claimant label the latter's official position as "part-time General Chairman", the record reveals that for all time material

herein he was fully engaged in the duties of the official position which included two days each month as a member of the Company's General Suggestion Committee for which he was paid by Carrier at the rate of the Alhambra Signal Maintainer position.

Claimant, apparently being apprehensive of the "part-time" prefix of the official position, submitted the following proposal to Carrier under date of September 11, 1959:

"This is to advise that I have been elected General Chairman of the Brotherhood of Railroad Signalmen to fill out the unexpired part time General Chairman position which expires December 31, 1960.

Since the General Chairman position is a part time position, it will be necessary for me to retain my Signal Maintainer's position with headquarters at Alhambra, Illinois, and to possibly work the position at various times. So as to not penalize the Carrier in filling my Signal Maintainer's position while I am working as General Chairman, I am agreeable for my maintenance position at Alhambra, Illinois, to be bulletined as a temporary position for the time that I am filling out the General Chairman unexpired term, with the understanding that the Signal Maintainer's position is my position at the expiration of the term of office as General Chairman.

I am also agreeable to work with the employe who is assigned to the temporary maintenance position on the very few days that it will be necessary for me to return and work the maintenance position. There is plenty of work on the position for two men on the days I will return, and not having to work many days, will not be an added expense to the Carrier.

As General Chairman, I will be a member of the Suggestion System and will attend meetings at least twice each month, which will be time worked with the Carrier and which I consider as applying as if I worked the Signal Maintainer's position at Alhambra, Illinois, so far as a leave of absence is concerned and my right to the Alhambra maintenance position. Therefore, please consider this as my request for a leave of absence in accordance with Rule 411 and other rules of the Signalmen's Agreement, for the time I am holding the official position as General Chairman.

If you are agreeable to the above method of filling my position at Alhambra, Illinois, and my working with the employe assigned to the position as temporary maintainer, kindly advise. It is understood that I will give you as much advance notice as possible when I intend to return to the position, same applying as to time intended to work. Under no circumstances do I intend this letter to deny my rights to retain seniority and rights under the Signalmen's Agreement or waive my rights to the maintenance position at Alhambra, Illinois.

If the above method of filling my position and my working the position is agreeable, please disregard my wire notice of intention to return to work at Alhambra, Illinois, on September 21, 1959. I will advise when it is necessary for me to return and work this position."

Carrier accepted the Proposal.

By Bulletin No. 21, dated July 29, 1963, Carrier advertised a Signal Maintainer's position with headquarters at Waggoner, Illinois. Claimant applied. He was the senior applicant. He was denied the assignment. Carrier held that as an official of Petitioner he was ineligible. Petitioner argues that: (1) the denial was derogatory of Claimant's seniority rights; and (2) "Actually, what can reasonably be expected to have happened, had the Carrier observed seniority in accordance with Rule 501 (a), is that [Claimant] would have relinquished all rights to the Alhambra position, and then he and the Carrier would have been in a position to make the same arrangement for handling the Waggoner position as they had done with the Alhambra position when he first became General Chairman." Rule 501 (a) reads:

"In assigning employees to fill bulletined vacancies or new positions in their own class, seniority of applicants shall govern."

The particularized Rule 411 relative to seniority rights of employees, such as Claimant, holding official positions with Petitioner must, by adherence to principles of contract construction, be held to prevail over the general language of Rule 501 (a).

The agreement entered into by Claimant and Carrier in 1959 relative to the Alhambra position is by its terms confined to that position and modifies applicability of Rule 411 only as to that position. It cannot be construed as a general waiver of Rule 411; nor can it be construed as obligating Carrier to enter into a like agreement with Claimant relative to any other position. Petitioner's assertion of "what can reasonably be expected to have happened" is in effect an admission of absence of contractual support.

Petitioner points to the sentence in Claimant's proposal relative to the Alhambra position which reads:

"Under no circumstances do I intend this letter to deny my rights to retain seniority and rights under the Signalmen's Agreement or waive my rights to the maintenance position at Alhambra, Illinois."

Claimant's rights to the Alhambra position have not been denied him — the September, 1959 agreement not having been rescinded. Further, he retains all his rights senioritywise and otherwise vested by Rule 411 of the controlling Agreement pertaining to his peculiar employer-employee relationship.

We find the Claim to be without merit. We will deny it.

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 31st day of May 1967.

DISSENT TO AWARD NO. 15603, DOCKET SG-15477

The Majority in Award No. 15603 have erred in their interpretation of the controlling agreements and their denial award.

When the claimant assumed his official position, he requested a leave of absence under Agreement Rule 411 with certain exceptions. Claimant clearly stated:

"Under no circumstances do I intend this letter to deny my rights to retain seniority and rights under the Signalmen's Agreement or waive my rights to the maintenance position at Alhambra, Illinois."

The Majority correctly states that the "Carrier accepted the Proposal." Surely one of the rights of any employee holding rights to an Agreement-covered position is the right to exercise his seniority to vacate the permanent position he owns (the Alhambra position was occupied by another employee on a "temporary" basis with "permanent" rights retained by the claimant) by obtaining another permanent position which he then holds under the same conditions as the former. The Claimant did not relinquish that right.

Contrary to the Majority's contention, the claimant's rights have been denied him, and Award No. 15603 is in error. Award No. 15603 is in error; therefore, I dissent.

W. W. Altus
For Labor Members
6/2/67

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