

Award No. 16092
Docket No. SG-15798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.

(a) On behalf of Mr. W. H. Blackburn for compensation at the respective rate of pay applicable to the vacancy that Mr. Blackburn should have been called and used to fill, under the provisions of Rule 19; retroactive 60 days from date of this claim, and to continue so long as such temporary vacancy or vacancies are filled by any regular assigned employee without calling and using Mr. Blackburn, a furloughed employee, in accordance with the agreement,

(b) It is the claim of the Brotherhood that the senior furloughed employees should be called and used on temporary vacancies in accordance with Rule 19, and be compensated on the basis of their seniority standing for all time worked by any regular assigned employee who has been or may be used on a temporary vacancy without calling and using the furloughed employees in seniority order, as provided in Rule 19; the claim to be retroactive 60 days from date of this claim, and continue so long as a violation exists.

[Carrier's File: SG-20740]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because Carrier used regularly assigned gang men instead of furloughed men to fill temporary vacancies.

Beginning on or about July 10, 1964, Carrier used two regularly assigned gang men to work with rail gangs at Danville, Virginia. These men held regular assignments on a gang that was working during the claim period at Hickory, N. C. under the direction of Foreman Rampy.

Under date of September 19, 1964, the General Chairman filed a claim on behalf of furloughed signal employee W. H. Blackburn, the Claimant in this case, for compensation retroactive 60 days, on the basis he should have been called and used at Danville in accordance with Rule 19 of the Signalmen's Agreement. The claim was subsequently handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

vacancies in accordance with Rule 19, and be compensated on the basis of their seniority standing for all time worked by any regular assigned employee who has been or may be used on a temporary vacancy without calling and using the furloughed employees in seniority order as provided for in Rule 19, and the claim to continue retroactive 60-days from date of this claim, so long as a violation continues.'

I again point out that there was no vacancy to be bulletined and there was no requirement in these circumstances that any bulletin be issued. Furthermore no one filled a vacancy.

Claim not having been presented as required by the agreement and being without basis and unsupported by the agreement, my previous declination of the same is reaffirmed."

OPINION OF BOARD: During the period July 13 to September 11, 1964, Carrier laid welded rail on the Danville Division. In this process it was necessary to relocate CTC and automatic block signals and to connect welded sections of rail by bond wire. Carrier used two regularly assigned gang men from a gang at Hickory, North Carolina, to perform the work with the rail gang at Danville, Virginia.

Brotherhood claims on behalf of W. H. Blackburn, a furloughed signal employe, that Carrier violated Rule 19 of the Signalmen's Agreement when it failed to use him to perform the work on this temporary vacancy at Danville, Virginia.

Carrier requests that the claim be dismissed because it is vague and indefinite omitting dates or specified compensation and because the claim was not filed within the 60-day time limit provision of Article V of the National Agreement of August 1954.

On the merits, Carrier denies that Mr. Blackburn was deprived of temporary work in violation of the Signalmen's Agreement and states that it properly gave the work to regularly assigned men who were paid in accordance with Rule 40.

Since Carrier did not raise the issue of non-compliance with Article V of the National Agreement on the property, this new issue cannot be considered now by the Board.

The claim contains sufficient information and clarity as to dates and compensation; therefore we hold it is properly before this Board.

Rule 40 recognizes the right of Carrier to send a permanently assigned employe away from his station to work elsewhere provided he is reimbursed for the expenses incurred. The Assistant Signalmen who were called upon to help with the work at Danville were paid at the regular rate of pay that they received when working at their headquarters and were reimbursed for expenses in accordance with Rule 40. As part of their own gang they were kept on that payroll rather than on the payroll of the gang at Danville.

The application of Rule 19 by Brotherhood is based upon the premise that a temporary vacancy existed. Although Carrier has the right to establish a vacancy or new position the record does not give evidence that Carrier

did avail itself of this prerogative. As a furloughed employe Mr. Blackburn therefore did not have a contractual right to perform the work with the rail gang at Danville.

Since a temporary vacancy was not created Rule 19 was not violated and Carrier properly assigned the work to regularly assigned gang employes who were paid in accordance with Rule 40.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1968.