



Award No. 16260

Docket No. SG-16829

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated the current Signalmen's Agreement, in particular Rule 50(a), when it failed to bulletin position of Traveling Signal Mechanic within the time limits defined in (a) of Rule 50. The position referred to herein with headquarters at NJ Cabin, Kentucky, became vacant on January 16, 1966, and remained in vacant status until February 18, 1966, at which time it was abolished by Bulletin No. G-2-66; such position should have been bulletined within ten (10) days following date vacancy existed.

(b) Carrier be required to compensate Assistant Signalman Jimmy Ray Locke at the applicable rate of pay of Traveling Signal Mechanic for the period beginning January 26, 1966, and extending through February 17, 1966, account of the violation as cited in part (a) of claim. (Carrier's File: SG-230)

EMPLOYEES' STATEMENT OF FACTS: The facts in this case are clear. The claim arose because Carrier did not bulletin a vacancy within thirty days previous to or ten days following the date it occurred.

The position is that of Traveling Signal Mechanic, with headquarters at NJ-Cabin, Kentucky, formerly held by E. L. Ratcliff.

Mr. Ratcliff was promoted to a position of Assistant Signal Supervisor on January 16, 1966. Carrier did not bulletin the position within ten days specified in Rule 50. Instead, in Bulletin No. G-2-66, dated February 18, 1966, it abolished the position.

On February 19, 1966, the Brotherhood's Local Chairman presented a claim on behalf of furloughed Assistant Signalman Jimmy Ray Locke for Traveling Signal Mechanic's pay from January 28, to February 18, 1966, inclusive, account vacancy not bulletined within the time period specified in Rule 50. The initial claim is Brotherhood's Exhibit No. 1.

having been no handling on the property beyond the contention that the position had to be filled between January 16 and February 18, 1966.

The claim in this case is for Jimmy Ray Locke at the Traveling Mechanic rate of pay. Carrier's Exhibit 2 is Cincinnati Division roster for signal employees, from which it will be noted Locke (third from bottom of roster) established seniority as Signal Helper on December 11, 1961, and was promoted to Assistant Signalman July 31, 1962. He has not to this time been promoted to Signalman.

Locke has not been in signal work during all of the period since December 11, 1961, as during 1964 and 1965 he was in the Car Department at Raceland, Kentucky, Car Shops working as Freight Car Repairer Helper.

Locke is at this time assigned as Assistant Signalman.

Having outlined the facts in the matter, the Carrier will proceed to outlining and discussing its position.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether or not Carrier violated the Agreement when it failed to bulletin the position of Traveling Signal Mechanic, which position became vacant when the regularly assigned holder thereof was promoted to Assistant Signal Supervisor. The vacancy occurred on January 16, 1966 and on February 18, 1966 the Carrier abolished the position by issuing Bulletin No. G-2-66.

The Organization's contention is that Rule 50(a) of the Agreement makes it mandatory upon Carrier to bulletin the position within the time limit set forth therein when it became vacant. The Organization is not in this instance contesting Carrier's right to abolish the position, but rests its case upon the claim that Rule 50(a) is explicit in its requirement that a position must be bulletined whenever a vacancy occurs.

Rule 50 — Bulletining Positions and 50(a) thereof reads as follows:

(a) New positions and vacancies will be bulletined within thirty days previous to or ten days following the date such vacancies occur, except that temporary vacancies need not be bulletined until the expiration of thirty days from the date such vacancies occur, unless it is apparent that the temporary vacancy will be in excess of thirty days.

The Carrier's position is that Rule 50(a) does not become operative until the Carrier, in the exercise of its managerial prerogatives decides to fill a vacancy, and that in the instant case Carrier decided not to fill the vacancy on the date it became vacant, and later abolished the position.

With this contention, we agree. See Award 15979 (Engelstein). Rule 50(a) sets forth the procedures that the Carrier must follow and this Rule must be complied with only after Carrier has first made the decision to fill the vacancy. Inasmuch as Carrier did not fill the vacancy in question, Carrier therefore did not violate said Rule 50(a).

Further, in support of its position, Carrier cites Award 12358 (Dorsey). The Organization argues that the rules involved and the facts therein in

regard to said Award 12358 are different than in the instant dispute. While the rule involved in said Award 12358 is not exactly like the Rule here and the facts are somewhat different in that the vacancy occurred when the regularly assigned holder thereof was on leave on account of illness, nevertheless, the principles laid down in said Award 12358 are analagous to our dispute, and therefore we feel are controlling in this instance. Referee Dorsey in said Award 12358, stated:

"Rules 56 and 57 of the Agreement, supra, establish procedures to which Carrier is required to adhere in bulletining new positions or vacancies. The sense of the Rules is that new positions or vacancies can be filled by Carrier only in compliance with the procedures agreed to therein. These Rules, neither literally or by implication, can be construed as imposing an obligation on the Carrier to fill a vacancy. To construe the Rules as prayed for by Petitioner, "we would have to read into (them) that which is not contained therein" — this would be beyond our power. Award No. 10888 * * *"

Inasmuch as Organization's further contention that Carrier did not comply with the Advance Notice Requirement of Article III of the June 5, 1962 Agreement governing the parties to this dispute was not raised on the property (Organization made this contention in its Rebuttal Statement to Carrier's Response to Ex Parte Submission by the Employes), this Board cannot now consider such contention in deciding this dispute. See Awards 15019 and 15076.

It is therefore the opinion of this Board that the Carrier did not violate the Agreement and the claim must be denied.

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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.

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