



Award Number 17426

Docket Number SG-17880

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, 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 and reprinted April 1, 1958, (including revisions), when it failed and/or declined to apply Rules 50 and 51, which resulted in violation of Rule 70, by failing to advertise the position of Lead Signalman in Signal Gang No. 10 for seniority choice, within ten (10) calendar days from the date the position became vacant on February 20, 1967.
- (b) Mr. P. O. Gowan be allowed the difference in rate of pay which he enjoyed as Assistant Signalman and the rate of Leading Signalman, from April 16, 1967, to and including June 29, 1967.
- (c) Mr. P. O. Gowan be allowed two dollars (2.00) for each calendar day from April 16, 1967 through and including June 29, 1967, as required by Rule 51. (Carrier's File: SIG 148-158)

EMPLOYEES' STATEMENT OF FACTS: On February 20, 1967, a position of Leading Signalman in Signal Gang No. 10 became vacant as a result of the dismissal of the occupant of the position.

The vacancy was not advertised, neither was this regularly established position abolished until June 22, 1967.

Rules 50 and 51 of the current Agreement read as follows:

"Rule 50. ADVERTISING POSITIONS FOR SENIORITY CHOICE.

New positions and vacancies which are expected to be of more than six (6) months duration shall be advertised as permanent within thirty (30) calendar days previous to or ten (10) calendar days following the date such new position is created or vacancy occurs. New positions and vacancies of more than thirty (30) calendar days and less than six (6) months duration shall be advertised within the above time limits as temporary. Except when temporary vacancy is due to physical disability of employe, a position which has been advertised as temporary and does in fact exceed six (6) months, shall be readvertised at the end of six (6) months as permanent.

revisions), as amended, which is by reference 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 employees 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. On February 20, 1967, position of Leading Signalman on Signal Gang No. 10, Rio Grande District, Tucson Division, became vacant, due to incumbent thereof being dismissed from the service of the Carrier, and since the Carrier did not desire to fill the position, there was no occasion to advertise and assign same. Under date of June 22, 1967, notice was issued by Signal Supervisor at Tucson advising that position of Leading Signalman on Signal Gang No. 10 would be abolished at close of work on said date.

During period for which claim is made, Mr. P. O. Gowan (hereinafter referred to as claimant) seniority date of January 5, 1967, was assigned to position of Assistant Signalman, in training, on Signal Gang No. 10. Claimant worked and was paid the rate of his Assistant Signalman's position during period claimed.

3. By letter dated June 6, 1967 (Carrier's Exhibit "A"), Petitioner's Local Chairman submitted claim to Carrier's Division Superintendent on behalf of claimant for difference in earnings of Leading Signalman's rate of pay and claimant's rate of pay as an Assistant Signalman, and expense allowance of two dollars per day until time that position of Leading Signalman on Gang No. 10 is advertised for seniority choice and assigned, alleging that claimant would have been successful applicant for the position. Carrier's Division Superintendent denied same by letter dated June 28, 1967 (Carrier's Exhibit "B"). Copy of Local Chairman's reply to that letter, dated July 4, 1967, is attached as Carrier's Exhibit "C".

By letter dated July 20, 1967 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, who denied same by letter dated September 28, 1967 (Carrier's Exhibit "E"). Copy of General Chairman's reply to that letter, dated October 4, 1967, is attached as Carrier's Exhibit "F".

(Exhibits not reproduced)

OPINION OF BOARD: On February 20, 1967, the Leading Signalman position in Gang No. 10 became vacant. The vacancy was not advertised under Rule 50 of the effective Agreement, nor was the position abolished until June 22, 1967, effective as of the close of work that day. The pertinent portions of Rules 50 and 51, hereinafter quoted and relied upon by the Petitioner, provide as follows:

"Rule 50. ADVERTISING POSITIONS FOR SENIORITY CHOICE. New positions and vacancies which are expected to be of more than six (6) months duration shall be advertised as permanent within thirty (30) calendar days previous to or ten (10) calendar days following the date such new position is created or vacancy occurs. New positions and vacancies of more than thirty (30)

calendar days and less than six (6) months duration shall be advertised within the above time limits as temporary. Except when temporary vacancy is due to physical disability of employee, a position which has been advertised as temporary and does in fact exceed six (6) months, shall be readvertised at the end of six (6) months, as permanent."

* * * * *

"Rule 51. ASSIGNMENTS TO NEW POSITIONS OR VACANCIES. Assignments to new positions or vacancies shall be made after advertisement notice has been posted for a period of fifteen (15) calendar days on bulletin boards of signal gangs and copies sent to all employees entitled to consideration in filling the position and to the local chairman, during which time employees may file their application with the official whose name appears on the notice. The appointment shall be made and the name of the successful applicant announced within a period of twenty (20) calendar days from the posting of the notice.

"A successful applicant shall be placed on his newly assigned position within thirty (30) calendar days after the close of the notice, or be compensated thereafter on the basis of the established rate of either that position or the position of which he works, whichever is the greater. In the event the successful applicant is not placed on his newly assigned position within the thirty (30) calendar day limit provided herein, he shall also receive an expense allowance of \$2.00 per calendar day until such time as he is placed on said position."

* * * * *

The Petitioner concedes that there is nothing in the parties' Agreement which requires the maintenance of any position. However, the Organization argues that vacancies must either be advertised and assigned in accordance with Rules 50 and 51, or the position abolished.

The main thrust of Carrier's position is that Rules 50 and 51 do not become operative until after a decision is made to retain the position.

Applying the Rules to the facts presented, we are disposed to accept the position of Petitioner, hence, part (a) of the Claim is sustained.

Part (b) of the Claim is presented on the basis that Claimant performed the duties of Leading Signaller up to and including June 29, 1967. The proof presented on the property supports this portion of the Claim up to June 9, 1967. Therefore, we will sustain part (b) of the Claim for the difference between the rate received and that of Leading Signaller for the period April 16, 1967 to June 9, 1967.

Regarding part (c) of the Claim, the fact that the parties provided in Rule 51 for a \$2.00 per calendar day expense allowance for each day held off of the newly acquired assignment, indicates that they anticipated some expense would be incurred as a result of the failure to transfer to the new assignment. Absent evidence that Claimant incurred any expense, we will deny part (c) of the Claim.

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 Agreement was violated.

A W A R D

Claim (a) sustained.

Claim (b) sustained in part.

Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.