



Award Number 17774

Docket Number SG-17090

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Pacific Railroad Company that:

- (a) The Western Pacific Railroad Company violates the current Signalmen's Agreement, effective September 1, 1949, and reprinted July 1, 1961 (including revisions), when it fails and/or declines to apply Rules 28 and 33, or Rule 70, by arbitrarily changing the headquarters of Mr. Simon's assigned position in complete disregard of the Signalmen's Agreement.
- (b) Mr. H. F. Simon be allowed time and one-half the Signal Inspector's rate of pay in addition to straight time rate of Signal Inspector for each date he is required to fill the position of Signal Inspector at Sacramento and not allowed to fill his assigned position at San Francisco.
- (c) Mr. Simon be allowed actual necessary expenses for each date he is required to be away from his assigned home station at San Francisco.

This claim is to be considered continuing from January 31, 1966, until Mr. Simon is returned to his assigned position at San Francisco.

[Carrier's File: D—Case No. 7658-1966-BRS: Local Case No.—None;

Signal Department]

EMPLOYEES' STATEMENT OF FACTS: This is one of several disputes which arose after Carrier consolidated its Signal and Communications Department effective January 1, 1966, then transferred the headquarters for the combined department from San Francisco to Sacramento on or about January 24, 1966.

In connection with this transfer, Carrier intended to transfer three signal employees and their positions with duties unchanged. Claimant Simon, the incumbent Signal Inspector at San Francisco prior to the transfer, was placed on the Signal Inspector position at Sacramento. Signal Draftsman-Circuit Designer J. E. Vlasak was handled the same as Simon. Signal Draftsman Neilson did not desire to transfer to Sacramento so Carrier permitted him to displace a TCS Maintainer at Wells, Nevada.

Some of the claims resulting from this transfer involve the interpretation and/or application of the February 7, 1965 Mediation Agreement and

tion of Signal Draftsman-Circuit Designer. Mr. Schmitt was not involved in the transfer of the Signal Engineer's office.

The consolidation of departments and transfer of employees, work, etc., involved an agreement dated February 7, 1965, which was executed with five unions, including the Brotherhood of Railroad Signalmen, party to the instant dispute, as a result of the unions' demands for a "Stabilization of Employment" agreement. The Agreement of February 7, 1965, provided protection for regularly assigned employees by limiting reduction in force to natural attrition and further provided wage protection for employees affected by changes which Carrier initiated. The protection was accorded to employees who held two years' seniority prior to October 1, 1964. All three employees to be transferred were protected under the February 7, 1965 Agreement.

In discussions of the proposed transfer with General Chairman R. T. Bates, Brotherhood of Railroad Signalmen, a general disagreement arose as to whether Carrier had the right to transfer the three employees with their work. The organization agreed that Carrier could transfer the work, but disagreed that the February 7, 1965 Agreement recognized Carrier's right to transfer employees without bulletining the transferred positions as "new positions" for seniority choice of all employees.

Attached as Carrier's Exhibit "A" is copy of letter dated December 16, 1965 written to General Chairman R. T. Bates following several discussions of the matter. Attached as Carrier's Exhibit "B" is copy of Mr. Bates' reply dated January 16, 1966.

Because of the obvious dispute existing between the parties involving interpretation and application of the February 7, 1965 Agreement, under date of February 8, 1966 Carrier submitted the issues for decision to the Disputes Committee established by the parties in Article VII of the February 7, 1965 Agreement to resolve such disputes. Attached as Carrier's Exhibit "C" is copy of Carrier's submission to the Disputes Committee established by the February 7, 1965 Agreement.

The instant dispute is one of six separate disputes, all involving transfer of the Signal Engineer's office to Sacramento, which the Signalmen's Organization has submitted either to your Board or to the Disputes Committee established by Article VII of the February 7, 1965 Agreement.

(Exhibits Not Reproduced)

OPINION OF BOARD: There is one of a series of five disputes growing out of Carrier's moving the headquarters of a newly combined Signal and Communications Department from San Francisco to Sacramento without the benefit of bulletin making the positions at Sacramento available to senior employees not involved in the transfer.

The employees contend that the method used by Carrier was in violation of the parties' schedule Agreement whereas the Carrier contends that its action was authorized by Section 1, Article III of the February 7, 1965 Agreement and under date of February 8, 1966, Carrier submitted question to Special Board of Adjustment No. 605, as follows:

"Does the February 7, 1965 Agreement give the Carrier the right to transfer an employee and his position including all duties unchanged, from one city to another within the same seniority district, or must the transferred position be made available by bulletin to senior employees not involved in the transfer?"

and the Board held in its Award No. 106 that:

"OPINION OF BOARD: As of January 1, 1966 Carrier moved the headquarters of a newly combined Signal and Communications Department from San Francisco to Sacramento. This transfer was made within the same seniority district. In connection with this move Carrier intended to transfer three protected Signal Department employes and their positions with duties unchanged from San Francisco to Sacramento. Two of the employes transferred with their work to Sacramento, and the third elected to exercise his seniority and went elsewhere. That vacancy was bulletined to all signalmen.

The Organization contends that under the circumstances new positions were created at Sacramento and these positions had to be bulletined as new positions under the terms of the schedule agreement.

Carrier contends that under the terms of the February 7 Agreement it had the right to transfer work and employes in the same seniority district. Carrier further contends that new positions were not created, they were transferred from San Francisco to Sacramento.

Under the terms of the February 7 Agreement it is clear that a Carrier has the right to transfer work and employes. Section 1 of Article III provides in part:

'The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. * * *'

With respect to such protected employes affected by such transfer, the November 24 Interpretations state that '* * * employes affected by such change will be permitted to exercise their seniority in conformity with existing seniority rules.' (Emphasis added.)

This language has the effect of giving the employe the right to transfer with the position, or elect not to do so and exercise his seniority under the existing seniority rules.

In order to sustain the Organization's position, such language would have to be construed to required the protected employe to exercise his seniority whenever a transfer of work was effected.

This is no way in inconsistent or in derogation of the existing seniority or bulletin rules of the Organization."

The foregoing Award disposes of the controlling issue in this case.

Finding nothing in the dispute as presented to us that is inconsistent with or contrary to any rule in the current Agreement we find that the Agreement was not violated as claimed and we will deny 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1970.