

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Francis X. Quinn, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILROAD SIGNALMEN****THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

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 Rules 33, 35, 41, 41½, 43, 50, 51 and 52, when it refused the claimant, Assistant Signalman J. B. Shrader, the right under our agreement rules to displace a junior Assistant Signalman at work in Force (System Signal) No. 796.

(b) Carrier now be required to compensate the claimant, Assistant Signalman J. B. Shrader, for expenses which he has incurred for meals, lodging, and transportation, this on account of the Carrier's arbitrary action in not complying with our agreement rules as cited in part (a) of this claim.

(c) Inasmuch as this is a continuing violation, claim is to cover the period of time until the Carrier takes the necessary corrective action, in accordance with our applicable agreement rules, to allow the claimant his right to displace an employee who is junior to him, as cited in part (a) of this claim. [Carrier's File: 1-SG-269]

EMPLOYEES' STATEMENT OF FACTS: Effective May 3, 1968, the position of Assistant Signalman J. B. Shrader on Clifton Forge Division Signal Gang was abolished. Mr. Shrader advised the Carrier that he desired to exercise his seniority by displacing junior Assistant Signalman E. H. Adkins on System Signal Gang No. 796. Notwithstanding that Shrader was senior, Carrier refused to permit him to displace Adkins, and the instant claim was filed, based on provisions of Rules 33, 41, 41½, 43, 50, 51 and 52. Pertinent portions of the applicable rules are copied below for ready reference.

"RULE 33—SENIORITY

(a) Seniority shall consist of rights based on relative length of service of employees as hereinafter provided.

(b) (EFFECTIVE MAY 16, 1958) Seniority of a new employee begins on the date of bulletin awarding a position (either temporary

(his home seniority district) with headquarters at Covington, Virginia, and first worked that position on Monday, May 6, 1968.

Claim was filed as indicated in Statement of Claim above, for expense of meals, lodging and transportation while working the position to which he exercised his seniority.

The claim has been declined in the procedural steps on the property on the basis that under the circumstances present, Claimant's seniority rights did not permit displacing E. H. Adkins on the system force and in any event there is no agreement provision that sustains a claim for expenses for meals, lodging and transportation for an employee who was working a regularly assigned position on his home seniority division on which he had properly exercised displacement rights in accord with his seniority.

OPINION OF BOARD: The claim here is that Carrier violated the seniority provisions of the parties' schedule Agreement when it refused to permit Claimant to displace a junior employee.

Carrier contends that since the junior employee, a protected employee, was occupying a "make-work" position, he was not subject to the operation of the seniority rules.

The basic issue has been here and decided in Award 17615, involving these same parties. We agree with that Award and will sustain parts (a) and (c) of the claim.

With respect to part (b) of the claim we fail to find any support for it in the record, therefore, it will 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 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 to the extent indicated in the Opinion.

AWARD

Claims (a) and (c) sustained. Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

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