

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the February 18, 1959 Letter of Agreement, signed by Mr. C. L. Wagner, when from May 6 to 10, 1968, it failed to fill a Signalman position vacancy in the Allentown Signal Gang.

(b) Carrier be required now to allow Mr. C. Fye: (1) five (5) days' pay at the Signalman rate; (2) three (3) hours a day traveling time from Allentown to Newark; and (3) seven hundred fifty (750) miles auto expense for the five days involved.

EMPLOYEES' STATEMENT OF FACTS: During the period May 6 through 10, 1968, the Carrier's Signal Maintainer at Bellwood, New Jersey, was off work because of illness. (Brotherhood's Exhibit No. 3.) Mr. A. Beatty, a Signalman in Carrier's Allentown, Pa., Signal Gang was used to fill the maintainer's position throughout the period in question, creating a vacancy in Mr. Beatty's position. (Brotherhood's Exhibit Nos. 3, 5, 7, and 8.) The latter vacancy was not filled (Brotherhood's Exhibit Nos. 3, 6, 7 and 8) even though Mr. C. Fye (Claimant), whose assignment was Signal Maintainer at Newark, New Jersey but whose residence was at Allentown, Pennsylvania was desirous of filling it. (Brotherhood's Exhibit No. 3.)

The Carrier's refusing to permit Mr. Fye to fill the vacant position caused him to use three hours per day (total 15 hours) in traveling between Allentown and Newark and to incur expenses by driving his personal automobile 750 miles.

There is an agreement between the parties bearing an effective date of July 1, 1942, Revised September 1, 1949, as amended, which is by reference made a part of the record in this dispute. There is also a letter Agreement dated August 18, 1953, and a letter of interpretation thereto dated February 18, 1959, (Brotherhood's Exhibit Nos. 1 and 2) which are pertinent to this dispute.

(Exhibits not reproduced.)

The letter of February 18, 1959 referred to is made part of this Submission as Carrier's Exhibit F and it will be definitely shown as having no application to this case.

There is in effect on this property an Agreement between the Lehigh Valley Railroad Company and The Brotherhood of Railroad Signalmen of America, effective July 1, 1942, revised September 1, 1949, which by this mention becomes a part of Carrier's Submission.

Exhibits A through P are also a part of Carrier's Submission.
(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held regular assigned position of Signal Maintainer at Newark, N. J., M. P. 114 on the property of the Lehigh Valley Railroad Company.

At Allentown, Pa., M. P. 93.3, one of the five assigned Signal Maintainers working in a gang at that location performing signal construction work vacated his position effective with the completion of duties Friday, May 3, 1968 and the vacancy was not filled May 6, 7, 8 and 9.

It is the position of the Brotherhood that the Carrier violated the Agreement when it failed to fill the position of the Allentown Signalman, May 6 through May 10, 1968.

The Carrier indicates that a review of the case showed that a Signal Helper position would be the proper classification of position to be used with the remaining four Signal Maintainers in the construction gang. Therefore the Signal Maintainer's position was abolished effective May 10, 1968 by Notice dated May 6, 1968.

This Board has repeatedly held that the Carrier has the right to determine the manner in which its work and operation are to be conducted except as such rights may be limited by law or by agreement.

Our review of the record and the Agreement reveals no evidence that the reassignment of duties was a subterfuge or part of a program to circumvent the requirements of the Agreement.

The record is barren of any proof that substantiates the claim and since the burden of establishing the claim rests with the Petitioner, we have no alternative but to 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 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 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 9th day of October, 1970.