



Award No. 18351
Docket No. SG-18484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ATLANTA AND WEST POINT RAIL ROAD COMPANY

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atlanta and West Point Rail Road Company— The Western Railway of Alabama that:

(a) Mr. Troy Collins be permitted to return at some early date to his permanent assignment in the signal gang.

(b) Mr. Troy Collins be paid the straight-time rate of his regular assigned permanent position in the signal gang which he is not permitted to work, in addition to any time paid for while working the arbitrary assignment of signal maintainer, Madison, Ga.

(c) Mr. Troy Collins be reimbursed for all expenses incurred, and he be paid for three (3) meals each day, five (5) days each week while working the arbitrary assignment of signal maintainer, Madison, Ga.

(d) Part b and c of this claim be paid beginning Monday, December 11, 1967, and continuing thereafter until Mr. Collins is permitted to return to his permanent assignment in the signal gang, or until a correction is made.

EMPLOYEES' STATEMENT OF FACTS: Signalman Troy Collins held a bulletined assignment as Signalman in a signal gang in charge of Foreman R. L. Bateman.

A position of Signal Maintainer at Madison, Ga., had been permanently advertised for bids by Bulletin 179 dated November 22, 1967, on which no bids had been received.

December 6, 1967 Carrier issued Bulletin 179A reading as follows:

"Position of Signal Maintainer advertised for bids by Bulletin No. 179 dated November 22, 1967 is assigned as follows: Assigned to Troy Collins.

NOTE: As no qualified bids were received on this bulletin, senior man was assigned."

OPINION OF BOARD: The basic facts are not in dispute. Claimant held a regularly assigned position as Signaller in a gang under the supervision of Foreman R. L. Bateman. On November 22, 1967 the Carrier advertised for bids by Bulletin No. 179, the temporary position of Signal Maintainer in Section No. 2 with headquarters at Madison, Georgia. This was occasioned because of the illness of the incumbent. No bids were received. By Bulletin No. 179A, dated December 6, 1967, Carrier assigned Claimant to that position on the theory that: "As no qualified bids were received on this bulletin, senior man was assigned." Claimant subsequently bid for and was assigned to the maintainer position on May 19, 1969.

A difference in seniority interpretation exists. Petitioner says that the Claimant "is not the senior man in the Signaller-Signal Maintainer Class." The Carrier replies that the Claimant "is the senior man in the Signal-Signal Maintainer Class, not holding signal maintainer position, this being the higher rate of pay in Signallers-Signal Maintainer Class."

Petitioner contends that the involuntary assignment of the Claimant to Signal Maintainer position was in violation of the Agreement, particularly Rules 41, 47 and 56. The "purpose and intent of almost every rule in the Agreement," says the Petitioner, "prevents the Carrier from removing a gang signaller from his position and arbitrarily placing him on a Signal Maintainer's position because no one has bid on the maintainer position."

Carrier argues: "There is nothing contained in the current schedule agreement which restricts carrier from making assignments as was done in this particular case and certainly nothing to the effect that when same is done that an additional day at straight time rate be paid for all such days claimant works the position assigned to him by carrier."

There is no rule in the agreement which gives the Carrier the right to compel an employee to accept a position advertised for bids. Rule 53 implies that an employee may decline a promotion. The mere fact, therefore, that no bids were received to Bulletin No. 179, and that Claimant had been the senior employee in the lower rated position in his classification, does not give Carrier the right to assign him to the temporary position he did not seek and desire. The undesired position could have been filled by abolishing a position which would open the bumping procedures resulting in the filling of all required positions. There are rules in the agreement which the Carrier could have invoked to have that position filled. Rule 41 does not permit Carrier to assign an employee to a higher rated position where there is no force reduction or abolished position.

Notwithstanding the violation of the agreement, Carrier also contends that the Claim should be denied because there is no rule which justifies recovery of another day's pay for each day the Claimant occupied the position. At most, he may recover only actual expenses incurred by him.

It is difficult to reconcile a contract violation without an appropriate and adequate remedy. A first thought is to sustain the claim for another day's pay for each day of violation as a penalty to discourage frequent and deliberate violations. But assessing penalties must be done with caution so as not to contravene any of the contract rules.

Rule 28 provides for actual expenses to employees away from their home stations. This implies that employees may be transferred from their assigned gangs. In Award 16278 we found that there was "nothing in the parties' agreement which supports the Brotherhood's claim that all members of the gang must always be together. Indeed, the parties obviously contemplate that some members of the gang will be separated by providing in Rule 23 that those away from headquarters will be reimbursed for their actual expenses if they are unable to return the same day." In Award 16931, we said, "Under Rules 22 and 23 of the Agreement, a Signaller may be used away from his Gang or Crew providing he is paid for travel time and expenses." Also see Awards 18291, 17143, 16463, 16092 and others.

The remaining question is whether Claimant incurred actual expenses. Petitioner's submission fails to show the nature or the amount of "actual expenses." Carrier is entitled to know what reasonable and warranted expenses reflect "actual expenses" incurred under Rule 28. Petitioner, therefore, shall submit a statement itemizing such "actual expenses" for each day Claimant involuntarily occupied the position. For this purpose, the Board adopts the definition of "actual expense" as contained in Award 10923.

Claim (a) is moot.

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 Carrier did not violate the Agreement with respect to claim (b).

AWARD

Claim (a) is dismissed.

Claim (b) is denied.

Claims (c) and (d) are remanded to the property to be adjusted between the parties in accordance with the Opinion, limited to May 19, 1969.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December, 1970.

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