

Award No. 18656
Docket No. SG-19003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION RAILROAD COMPANY

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

Mr. R. J. Hays be paid for 40 hours at the rate of the difference between the rates of pay of Foreman and Assistant Foreman account his filling the vacancy of such higher position for the dates April 14, 1969 to April 18, 1969, inclusive.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties to the dispute, bearing an effective date of October 1, 1950, (Reprinted December 1, 1965) as amended, which is by reference thereto made a part of the record in this dispute. Particularly pertinent and controlling rules of that agreement are:

"RULE NO. 13
Advertising Positions

(a) New positions and vacancies of thirty (30) calendar days' or more duration will be advertised for a period of five (5) days in agreed-upon places and filled by the senior qualified employe who bids for the position. The successful applicant will be awarded the position within fifteen (15) days from the date the position is bulletined.

(b) Vacancies of less than thirty (30) days' duration will be considered temporary and may be filled by the Management without regard to these rules.

(c) Where it is apparent to the Management before the expiration of ten (10) days that an employe does not possess the necessary ability and fitness to permit him to qualify, he will be removed from the position prior to the expiration of the ten (10) day period. An employe failing to qualify within ten (10) days will within five (5) days return to his former position, unless it has been filled by a senior employe by bid or displacement, in which event he will exercise displacement rights under the provisions of Rule No. 8.

(d) An established position shall not be discontinued and a new one created under a different title covering relatively the same class

The grievance was progressed under the existing grievance procedure between the Carrier and the Organization. On July 9, 1969, this grievance was declined by Mr. W. H. Martin, Superintendent of the Signal and Telephone Department. This letter of declination is submitted as Carrier's Exhibit "A."

On August 26, 1969, this grievance was appealed to the office of the Director Labor Relations. This is attached hereto as Carrier's Exhibit "B."

In a letter dated October 23, 1960, the above grievance was declined by the office of the Director Labor Relations. This letter is submitted as Carrier's Exhibit "C." The office of the Director Labor Relations is the highest office on this property designated to handle labor matters.

As the Carrier understands the employee's claim, they are contending that while Foreman R. R. Boyd was on vacation the week of April 14, 1969, Mr. R. J. Hays, a leading signalman, filled Mr. Boyd's vacation vacancy.

(Exhibits not reproduced.)

OPINION OF BOARD: It is so well settled as to require no citation that this Board, in adjudicating disputes, may not consider issues or defenses not raised by the parties in the handling of the dispute on the property.

In the dispute herein, in the initial presentation of the claim, the Petitioner contended:

"2. During the week of April 14 to April 18, 1969, the position of Foreman in the Signal Department was vacated as a result of the vacation of Mr. R. R. Boyd, the holder of this position. The Carrier filled this vacancy by placing Mr. R. J. Hays, a Leading Signalman, on this Foreman job. However, Mr. Hays was not compensated for this work at the rate of Foreman, but instead was paid at the rate of Assistant Foreman."

The correspondence covering the handling of the dispute on the property contains no refutation of the above contention.

In its submission the Carrier has raised a number of defenses to the claim, which the Petitioner characterizes as "new issues" not properly before the Board. In line with the principle outlined in the first paragraph hereof, the Board may not properly consider the defenses raised for the first time by the Carrier in its submission.

Based strictly on the record of the handling on the property, the Board finds that the Petitioner made a prima facie case, which was not refuted by the Carrier. The claim will be sustained on that basis.

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.

AWARD

Claim sustained.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 23rd day of July 1971.