NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19980
Docket Number SG-19677

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (Pacific Lines)

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

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employes of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958 including revisions) and particularly Rule 32 which resulted in violation of Rule 70, also the National Vacation Agreement dated December 17, 1941, particularly Article 12(b) which provides in part, 'When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority.'

(b) Mr. Ingram be allowed compensation for a call of 4 and 3/4 hours overtime at the rate of time and one-half of the position of CTC Signal Maintainer for August 12, 1970, plus the difference in the rate of pay between Signalman and CTC Signal Maintainer for the week of August 10 through 14, inclusive, account Junior Employe used to relieve vacationing Brooklin CTC Signal Maintainer with no effort used to observe the principle of seniority. /Carrier's File: SIG 148-186/

OPINION OF BOARD: The parties agree that claimant had seniority under Rule 32 of the Agreement in Class C which includes Signalmen and Signal Maintainers. It is agreed that pursuant to the National Vacation Agreement of December 17, 1941, Article 12 (b), the position in question was not a vacancy. Also, that according to this Agreement, the position was not filled by a relief man. In such event, "---, effort will be made to observe the principle of seniority."

In this case the Carrier selected a junior employe in the same classification as the claimant to fill the position during the vacation of the signal-maintainer. There is no dispute that the signal-maintainer received 6.4¢ per hour more than the signalman. The record indicates that the junior employe selected was next in seniority to the claimant.

The Organization does not deny that the Carrier has the right to select the employe who in the Carrier's judgment is qualified to fill the vacancy. The Organization's position is that claimant is qualified because he is classified as a signalman and signal maintainer and has been for nine years prior to this occasion. It has argued that if claimant could not fill the duties of a

signal maintainer's position, he should not have been in that classification. The contention is made that it is not sufficient for the Carrier to assert that the claimant is not qualified to fill the vacation position and that the junior employe is qualified, unless it provides proof to justify the decision.

The Carrier's position is that under the National Vacation Agreement, it is not required to follow strict seniority among men of the same class. It has argued that it met the requirements of both the National Vacation Agreement and the Agreement between the parties by selecting in order of seniority the employee who was qualified to fill the position. The Carrier has contended that since there is no mandate to follow seniority it has the right to select the qualified employe in order of seniority; and that the Petitioner has the burden to prove that the Carrier made the wrong selection or that the Carrier must rely on the classification as proof that claimant is qualified.

In general, the Carrier has the right to exercise its discretion to determine sufficiency of fitness and ability of an employee. The right must be exercised reasonably. The burden is on the claimant to prove that the Carrier acted arbitrarily and capriciously in passing over a senior employe. The judgment of the Board will not be substituted for that of the Carrier in the absence of such proof. So many Awards have supported this historically established and recognized fundamental right that there is no need to cite the cases.

Among the prior Awards submitted for our consideration we agree with those which reach the conclusion that a special situation is created by the application of the National Vacation Agreement 12 (b). The rule to be followed is set forth in Award 10319, which was adopted in Award 17146 and Award 17939, namely: "The Carrier has substantial latitude in applying the principle of seniority under the provision of this Article."

The record does not contain evidence other than assertions by the Petitioner that the Carrier made no effort to observe seniority under the circumstances of this case.

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

The Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.