

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20255  
Docket Number SG-19946

Frederick R. Blackwell, 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 (Pacific Lines):

(a) That the Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employees of the Signal Department represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958, including revisions) and particularly Rule 33, which resulted in violation of Rule 70.

Rule 33 - SENIORITY RIGHTS, provides: "Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service as hereinafter provided."

Rule 70 - LOSS OF EARNINGS, provides: "An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

(b) That Mr. Dale Bohling be reimbursed for loss suffered when a junior employee was used to fill a temporary vacancy.  
/Carrier's File: SIG 148-191/

OPINION OF BOARD: The claim is that an employee junior to Claimant was improperly assigned to the position of Signal Foreman at Carrier's Sacramento, California, signal shop, while the position was temporarily vacant during the period of its advertisement for seniority choice. Neither the Claimant nor the employee assigned to the temporary vacancy held seniority in the class of Signal Foreman; both held seniority in the class of Signalman, with Claimant being the senior Signalman.

In progressing the claim on the property the Employees alleged a violation of Rule 33, which reads as follows:

"RULE 33. SENIORITY RIGHTS. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service as hereinafter provided."

The Carrier's response to the claim, as stated in an August 18, 1971 letter of the Assistant Manager of Labor Relations, was that:

"Claim in this case is stated to be based upon provisions of Rule 33, captioned 'Seniority Rights,' and Rule 70, captioned 'Loss of Earnings.' As discussed in conference, claimant Bohling does not hold seniority rights in the Foreman class. Rule 32 states the conditions under which 'seniority begins...in the seniority class in which employed,' with specific exceptions, as stated therein, including use of employees filling temporary vacancies in higher seniority classes. Since claimant Bohling has not established seniority rights under Rule 32 to the position in question, Rule 33 is not applicable. Even if provisions of Rule 33 were applicable, that rule states that employees shall be entitled to consideration for positions 'as hereinafter provided,' and no such provision has been cited that would support the claim in this case." (emphasis added)

No other rule was cited on the property by the Employees in response to the foregoing underlined passage; however, in their Submission to this Board, the Employees cite Rule 34 (Seniority in Other Classes) and Rule 48 (a) (Promotions), along with Rule 33, as supporting the claim.

The Carrier objects to Board consideration of Rules 34 and 48 (a) on the ground that they were not raised on the property. Rule 33, standing alone, does not support the claim and Carrier's objection to consideration of Rules 34 and 48 (a) is well taken. The Employees were expressly challenged on the property to cite any additional rules that would support the claim. The Employees failed to do so and the injection of additional rules for the first time before this Board comes too late. Award 18246. We shall deny the claim, on the ground that it is not supported by Rule 33.

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;

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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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulose  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.