

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20276
Docket Number SG-19914

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago, Milwaukee, St. Paul and Pacific Rail-
(road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brother-
hood of Railroad Signalmen on the Chicago, Mil-
waukee, St. Paul and Pacific Railroad Company (Lines East) that:

(a) Carrier violated the current Signalmen's Agreement,
as amended, particularly Rules 65 and 66, when it assigned G. T.
Schaning to the Signal Maintainer position at Franksville, Wisconsin,
effective December 1, 1970.

(b) Carrier should now be required to compensate Assist-
ant Signalman R. J. Marko at the penalty rate for each 8-hour day,
five days per week, commencing December 1, 1970, and continuing as
long as this position continues to be improperly filled.

[Carrier's File: F-1073/

OPINION OF BOARD: On July 14, 1970, the Carrier issued the following
Bulletin No. 138-70:

"TO EMPLOYEES CONCERNED:

The following position is hereby advertised for
bids in accordance with the Signal Department Employees'
Agreement. Applications should be sent to the undersigned
where they will be received up to 12:00 o'clock Noon,
July 24.

TITLE OR POSITION:	Signal Maintainer
HEADQUARTERS:	Franksville, Wisconsin
RATE OF PAY:	\$3.7837 per hour
HOURS OF SERVICE:	7:00 A.M. to 12:00 Noon 1:00 P.M. to 4:00 P.M.
ASSIGNED TERRITORY:	From Signal 14-R, Stur- tevant to Signal 73-5, not inclusive, on the westward main. Signal 73-4 to Signal 16-R, Sturtevant, not incl. on the eastward main.

"REGULAR DAYS OFF DUTY:	Saturdays and Sundays
PERMANENT OR TEMPORARY:	Permanent
BRIE DESCRIPTION OF DUTIES:	Maintenance of above signalling"

No bids were received for the position advertised. Consequently, on July 28, 1970, Signal Bulletin No. 142-70 was issued, reading:

"TO EMPLOYEES CONCERNED:

The permanent position of Signal Maintainer at Franksville, Wisconsin was recently bulletined in the Middle-Northern District, but there were no bids received for the job. If there are any Southern District employees interested in the job, applications should be filed within the next ten days, and they will be given consideration."

No bids were received from any employees. On August 22, 1970, an employee junior to Claimant requested on-the-job training to qualify for the position, and he was given the training. On December 1, 1970 he was assigned to the position. Claimant made no application for the position, expressed no desire whatsoever either verbally or otherwise for the position, and was fully employed and under pay and lost no earnings as a result of the alleged violation of the Agreement, Rules 65 and 66, reading as follows:

"RULE 65.

New positions or vacancies which are expected to be of more than six (6) months duration shall be bulletined as permanent within thirty (30) days previous to or ten (10) days following the date such new position is created or vacancy occurs. New positions or vacancies of more than thirty (30) days and less than six (6) months duration will be bulletined within the above stated time limit as temporary. Except when temporary vacancy is due to physical disability of employee, a position which has been bulletined as temporary and does in fact exceed six (6) months, will be re-bulletined at the end of six (6) months as permanent. If a position being filled under a temporary bulletin is abolished, the incumbent may return to his former position. The following note will apply to Lines West only:

Note: Where an employee is the successful bidder on a temporary seasonal foreman's position, such six (6) months temporary period may be extended, by agreement, for an additional three months. Such agreement, between the Ass't to Vice President and the General Chairman, must be in writing and cover only the specific

"seasonal job in question."

"RULE 66.

(a) Assignments to new positions or vacancies will be made after bulletin notice has been posted for a period of ten (10) days and sent to all employees entitled to consideration in filling the position and to Local and General Chairman during which time the employees may file their applications with the officer whose name appears on the bulletin. The appointment will be made and the name of the successful applicant announced within a period of twenty (20) days from the posting of the bulletin, together with the names of all employees bidding on the position.

(b) Transfer of successful applicants to new assignments will be made within fifteen (15) days after close of the bulletin. New positions or vacancies may be filled temporarily pending permanent appointment."

The Organization states that "The instant dispute arose because of the manner in which Carrier filled a vacant position - - by appointing an employe who did not bid, after the bulletin closed, rather than according to and within the period required under the bulletining and assignment rules." It is the Position of the Brotherhood that there is no provision in the Signalmen's Agreement whereby a position can be filled permanently without the benefit of a bulletin pursuant to Rule 65, and assignment pursuant to and within the time period prescribed in Rule 66. As stated by the General Chairman, if there are no bidders when the position is bulletined, the vacancy still exists and the position should be rebulletined under Rule 65 until it is filled by a successful applicant."

The Carrier, in letter of July 30, 1971, by L. W. Harrington, Vice President-Labor Relations, Carrier's Exhibit C, takes the position:

"Please be advised I do not find any provision within the Signalmen's Agreement that provides for the rebulletining of positions once a position has been bulletined and no bids are received. It is significant to note that while you make this contention, you did not cite any provision within the agreement to support it.

Rule 66 (a) which you allege has been violated in the instant case, provides in pertinent part that,

'The appointment will be made and the name of the successful applicant announced within a period of twenty (20) days from the posting of the bulletin, together with the names of all employees bidding on the position.'

What the above contemplates is that there will be a successful applicant for a particular bulletined position and the appointment of such a successful applicant will be announced within a period of twenty days from the date the bulletin was posted. In the instant case, if there had been a successful applicant for the position in question when it was bulletined, the appointment would have been handled in accordance with the provisions of Rule 66 (a). Inasmuch as there was no successful applicant for the position in question, your contention that the Carrier violated said rule is completely without merit and foundation."

This Board has studiously considered the language and apparent intentment of Rules 65 and 66 of Agreement. We are compelled by the explicit terminology of these rules to declare, in the language of the Carrier, that we "do not find any provision within the Signalmen's Agreement that provides for the rebulletining of positions once a position has been bulletined and no bids are received."

It is axiomatic that this Board does not make new Agreements for the parties. It is well settled that this Board must accept Agreements as made by the parties and must not insert or delete words under the guise of construing unambiguous provisions. We must accept the provisions of Rules 65 and 66 as adopted by the parties.

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 Number 20276
Docket Number SG-19914

Page 5

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.