

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20342
Docket Number SG-20142

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

Claim No. 1.

(a) On or about July 6, 1971, the Carrier violated, and continues to violate the provisions of the Memorandum Agreement applicable to District Signal Foreman effective July 1, 1956, when it failed to bulletin and/or appoint a District Signal Foreman from the Signalmen's class after Mr. J. Chalapy retired as District Signal Foreman.

(b) The Carrier now be required to reimburse Mr. J. Schuhrke the difference between his rate of pay and that of the District Signal Foreman's from July 1, 1971, and continuing until Carrier complies with the Agreement.

/Carrier's File: 79-17-667

Claim No. 2.

(a) On or about November 20, 1970, the Carrier violated, and continues to violate, the provisions of the Memorandum Agreement applicable to District Signal Foreman effective July 1, 1956, when it failed to appoint a District Signal Foreman from the Signalmen's class after it was bulletined to the District Signal Foreman and no bids were received.

(b) The Carrier now be required to reimburse Mr. T. Olliges the difference between his rate of pay and the District Signal Foreman's rate of pay, starting 60 days prior to the date of this claim and continuing until Carrier complies with the Memorandum Agreement.

/Carrier's File: 79-17-657

OPINION OF BOARD: In November, 1970, the District Signal Foreman at Mayfair retired. The Carrier bulletined the position but when no bids were received, it did not appoint an employee to the position.

Upon the retirement of a District Signal Foreman in July, 1971, the Carrier neither bulletined, nor filled (by appointment) the position.

Both claims are submitted here under the Organization's contention that Section 9 of its Memorandum Agreement requires that all new or vacant positions of District Signal Foremen of thirty (30) days or more duration, will be bulletined for a period of ten (10) days and if no applications are received from qualified foremen in the district, the position will be filled

by appointment of the best qualified individual in the signalmen's class in the district. The Organization contends that the wording of the memorandum is mandatory and that a failure to fill the positions is a violation.

The Claimant asserts that Carrier violated Article V, Section 1(a) of the Agreement by the manner in which initial denials of the claims were conducted. The quoted section of the Agreement requires a denial to contain written reasons for such disallowance. The denials of the claims stated, "I can see no rule to base this claim on and therefore, your claim is denied."

We have reviewed the authorities cited by the parties concerning the sufficiency of answers to claims. We note that the quoted denials were in response to claims which were themselves not specific and merely alleged a violation of the Memorandum Agreement when the Carrier failed to appoint employees to the foreman's classification.

Upon the facts of this record, we are unable to conclude that the Carrier violated the mandates of the Agreement as alleged by Claimant.

The Carrier asserts that Claim No. 2 is barred because a claim was not submitted within the mandatory sixty-day period of the failure to appoint to the foreman's position. The Organization concedes that more than sixty days elapsed, but urges that its claim is of a "continuing nature." We believe that the claims are deniable on their merits and consequently, it is unnecessary to consider the dispute concerning the nature of the claims.

The Carrier defends its action on the ground that it abolished both positions. Concerning Claim No. 2, the Carrier states that it abolished the position when no one submitted a bid. Concerning Claim No. 1, Carrier asserts that it abolished the position upon the retirement of the former incumbent. A bulletin was issued on November 5, 1971, confirming that the positions had been abolished.

We believe that it is firmly established that in the absence of an Agreement restriction, a Carrier may abolish a position. See, for example, Special Board of Adjustment No. 371, Award No. 13 and Third Division Award No. 14738 concerning these same parties. Moreover, on the property, the Organization conceded that fact when it stated:

"We agree with the first part of Mr.....'s denial that there is nothing in the schedule which requires a certain number of District Signal Foremen.... This claim however is not based on the number but on the Memorandum Agreement. If the Carrier did not want to fill the position they could have abolished the position when retires...."

In direct reply, Carrier cited the above language and stated:

"This in fact is what was done."

There is a suggestion that the delay in issuing a bulletin regarding the abolishment of positions (rather than issuing a notification coincident with the alleged abolishments) constitutes an admission that, in fact, the positions were not abolished at the times stated by Carrier.

While there is dispute as to whether Rule 36 of the Agreement is applicable to Foremen, nonetheless, the type of notification mentioned there does not apply here. Other than that reference, we have searched the pertinent documents in vain to discover any obligation by Carrier to issue any formal or informal bulletin or notification, orally or in writing, concerning abolishment of positions. Thus, we conclude that a belated notification is not, in and of itself, an admission. If there were a sharp factual dispute under which Claimant asserted that the position continued to exist during the time in question or that some individual performed duties of the allegedly abolished position, then, a belated bulletin might be of some evidentiary value in determining such a fact dispute. But no such arguments or contentions are advanced here.

The record fails to show that Carrier did anything other than abolish the positions; which was their right. We will deny the claim.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. M. P. [Signature]
Executive Secretary

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