NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20473
Docket Number SG-20127

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo) that:

(a) The Company violated and continues to violate the current Foremen & Inspectors' Agreement, effective February 15, 1961, as amended, particularly Rule 10-H, when Leading Signal Mechanic J. W. Paul, an employe who was junior to Leading Signal Mechanic J. J. Crowley, is to be assigned, effective October 1, 1971, to fill a vacancy of Signal Foreman which was advertised on Bid Bulletin No. 22 dated September 1, 1971.

(b) The Company shall be required now to assign Mr. J. J. Crowley to position of Signal Foreman, establish a date for him in the Signal Foreman class of October 1, 1971, and pay him the difference between the wages he earns as Leading Signal Mechanic and that which he should have earned as Signal Foreman from October 1, 1971, until the date on which he is properly assigned to the position.

OPINION OF BOARD: Carrier issued a bulletin for bids on a Signal Foreman position; which position is subject to the Foremen and Inspector's Agreement.

Claimant, and others, submitted bids for the position. It is conceded that those who submitted bids, including Claimant, held no seniority under the Foremen and Inspector's Agreement, but rather, were subject to, and held seniority under, the Craft Agreement.

An employee, junior to Claimant under the Craft Agreement, was awarded the position.

The Organization's claim is based upon Rule 10 H of the Foremen Agreement:

> "H. Promotion to positions other than Retarder Technician and Electronics Specialists shall be based on seniority, ability and fitness; ability and fitness being sufficient, seniority shall prevail. Retarder Technician and Electronics Specialist positions will be filled by appointment of the individual considered best qualified by management."

The Claimant points out that the Signal Foreman position is the lowest classification under the Foremen Agreement, and that no one being promoted to that position could have previously gained seniority in the position. Thus, the parties must have considered that craft seniority would be applicable for a promotion to the position. Claimant also notes that Rule 10 A of the Foremen Agreement requires that bulletins shall be sent to employees under the Craft Agreement.

Carrier argues that the only agreement cited by the claim is Rule 10 H of the Foremen Agreement, and by its terms, that agreement applies only to certain positions. Claimant was not covered by the agreement and thus, none of its rules could have applied to him. Accordingly, Claimant has no contractual rights to the position in question.

Although the parties argue questions of fitness and ability, and disagree concerning certain past practices, we find it unnecessary to pass on those questions.

While we do not minimize Claimant's argument that the position in question is the lowest classification, it is not the only position to which seniority under the Foremen Agreement is applicable. We also note, with interest, that the Craft Agreement covers promotions to positions included therein; yet it makes no reference to promotions to positions covered by the Foremen Agreement.

Award 17661, concerning these same parties, considered a similar factual dispute. Although it dealt with a different position under the Foremen Agreement, nonetheless, it responded to a number of contentions advanced in this dispute. The Award stated:

> "The instant situation arose when two craft employees applied for the position of relay inspector and the Carrier assigned the junior employee under the craft Agreement to the position. Neither employee held seniority under the Inspector's Agreement. There were no other applicants.
>
> It is contended by the Organization that the language requiring that notice of vacancies be sent to employees under the craft Agreement, as provided in Rule 10 A when coupled with the unrestricted statement in Rule 10 H that 'promotion ... shall be based on seniority, ...' extends seniority rights to employees covered by the craft Agreement.
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> It is the Carrier's contention that the language in Rule 10 A requiring that notice be sent to employees under the craft Agreement was for informational purposes only and in no wise obligated the Carrier to follow craft seniority in filling positions under the Inspector's Agreement.

"While we find no basis to conclude that the language of Rule 10 A, relative to sending notices of vacancies to employees under the craft agreement, was included purely for information to such employees, we likewise however find no basis to conclude that the parties to the Agreement intended that seniority under the craft Agreement would become contractually binding upon the Carrier in filling vacancies, particularly when this rule is read in conjunction with Rules 6 and 7 of the Agreement.

We do not question the contractual abilities of the parties to extend terms of the Agreement to persons not the primary beneficiaries, but in such instances the extension must be clear and unambiguous. The language made the basis of this claim lacks the clarity necessary to bring employees under the craft Agreement within the Inspector's Agreement."

We do not mean to suggest that the Organization's argument is not persuasive, to some extent, but we concur with Award 17667. In order to extend the terms of an agreement to persons not the primary beneficiaries, we require that such extension be demonstrated in clear and unambiguous terms. In the absence of such a showing, coupled with the silence of the Craft Agreement, we are unable to conclude that Award 17667 is palpably erroneous. 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 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

That the Agreement was not violated.

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 25th day of October 1974.