

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20542
Docket Number SG-20276

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(J. F. Nash and R. C. Haldeman, Trustees of the
(Property of Lehigh Valley Railroad Company,
(Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Lehigh Valley Railroad
Company that:

- (a) Carrier improperly abolished signal employees' positions, on or about July 26, 1971, in violation of the Signalmen's Agreement and the February 7, 1965 Agreement.
- (b) Carrier should be required to compensate the following fifteen affected employees for wage loss suffered, and/or reimburse them for extra expenses because the force reductions forced them to exercise displacement rights to obtain another position which required them to entail extra expenses:
 - 1. W. Kowalow, Signal Foreman - Difference in pay between Signal Foreman and Signal Maintainer, August 9 to 25, 1971, inclusive, for 105 hours straight-time and 22 hours punitive.
 - 2. C. P. Cannon, Signal Maintainer - Car mileage, 48 miles per day @ 9¢, certain specified days August 2 through 18, 1971 (total of 13 days).
 - 3. W. R. Wygrola, Signalman - Car mileage, 90 miles per day @ 9¢, certain specified days July 26 through August 25, 1971 (total of 18 days).
 - 4. D. E. Allardyce, Signalman - Car mileage, 100 miles per day @ 9¢, for a total of 5 days, July 26 - 30, 1971, and 175 miles per day for 8 days, August 16-25, 1971.

5. W. S. Quinn,
Signalman - Pay at Signalman rate for a total of 18 days, August 2 through 25, 1971 (8 hours per day).
6. D. N. Spigarelli,
Signalman - Pay at Signalman rate for a total of 7 days, August 23 through 31, 1971 (8 hours per day).
7. J. E. Herda,
Signalman - Pay at Signalman rate for a total of 23 days, July 26 through August 25, 1971.
8. L. J. Dowd,
Signalman - Pay at Signalman rate for a total of 23 days, July 26 through August 25, 1971.
9. F. X. Jewell,
Signal Foreman - Pay at Signal Foreman rate for a total of 18 days, July 26 through August 18, 1971. Car mileage 150 miles per day @ 9¢, for 5 days, August 19 through 25, 1971.
10. W. F. Bubick,
Signal Helper - Pay at Signal Helper rate for a total of 23 days, July 26 through August 25, 1971.
11. G. J. Fech,
Signalman - Pay for 3 hours' riding time daily for 23 days. Car mileage 130 miles per day @ 9¢, for a total of 16 days.
12. A. P. Brown,
Signalman - Pay at Signalman rate for 5 days.
13. R. Azzalina,
Signal Maintainer - Pay at Signal Maintainer rate for a total of 22 days, July 27 to August 26, 1971.
14. C. T. Heitzman,
Relay Inspector - Pay for 40 hours @ \$0.0737 per hour, 10 hours @ \$4.4498 per hour. Car mileage, 84 miles per day @ 9¢, for a total of 5 days.
15. H. McPherson,
Signalman - Pay at Signalman rate for 1 day, July 26, 1971.

NOTE: This Statement of Claim is identical to one being submitted concurrently to the Disputes Committee established under the February 7, 1965 Agreement, Mediation Case A-7128. That tribunal is being requested to rule on the issues involving that Agreement, whereas the remaining issues are to be adjudicated by this Board.

OPINION OF BOARD: This case presents claimed violations of the controlling Signalmen's Agreement on the property and of the February 7, 1965 National Agreement. The February 7, 1965 Agreement provides for the establishment of a Disputes Committee to resolve disputes involving its interpretation or application. That Committee, hereinafter Special Board of Adjustment No. 605, rendered Award No. 368 on October 18, 1973 on the identical claims herein insofar as they relate to alleged violations of the February 7, 1965 Agreement. In that Award, the Special Board resolved each of the claims except No. 10 (W. F. Bubick) and No. 12 (A. P. Brown). Claim No. 10 was remanded to the parties for determination of Bubick's protected status, under the February 7, 1965 Agreement, with continuing jurisdiction in S.B.A. No. 605 for further resolution as necessary. Claim No. 12 was dismissed by the Special Board since Brown is concededly a nonprotected employee under the February 7, 1965 Agreement and the jurisdiction of S.B.A. No. 605 is limited to the interpretation and application of that Agreement and no other Agreements.

In light of all the foregoing, the parties stipulate and we find that the only claims remaining before this Division for resolution are Nos. 10 and 12. Moreover, under generally recognized principles of res judicata the determination of S.B.A. No. 605 will be recognized by us as determinative of those claims insofar as they allege violations of the February 7, 1965 Protective Agreement. Accordingly, our focus on Nos. 10 and 12 is concerned only with the allegations therein of violations of the controlling Signalmen's Agreement.

The rules that apply to a force reduction of "unprotected" employees are Section 4 of Article IV of the Signalmen's Agreement, as amended by the June 5, 1962 National Agreement, and the 16-hour "emergency layoff provisions" of the August 21, 1954 Agreement. The net effect of these contractual provisions is to require five (5) working days written advance notice to such employees, except where emergency conditions prevail which cause suspension of Carrier's operations and renders the work to be performed by the employees either non-existent or impossible of performance. In the event that enumerated emergency conditions such as flood, snow, storm, hurricane, earthquake, fire or strike cause such an effect on Carrier's operations and on the work of the employees, the 5-day notice rule is modified so that no more than sixteen (16) hours notice need be given.

With the foregoing contractual guidelines established, we turn to the claims remaining for our consideration. Careful examination of the record herein shows that Claim No. 10 (W. F. Bubick) alleges improper abolishment of his position. However, Carrier asserts and Petitioner does not effectively refute that Bubick's position as Signal Helper was not abolished; rather he was displaced by a senior employe who had in turn been displaced from his position. In these circumstances, Bubick was secondarily affected, if at all, by abolishment and Claim No. 10 must accordingly be denied.

Claim No. 12 (A. P. Brown) is on a different footing. Carrier does not deny that Brown was given less than 5 working days advance notice of the abolishment of his position on July 24, 1971. Carrier asserts however that the "16 hour rule" applies to Brown's case because of a strike against Norfolk & Western Railway on July 24, 1971 by the United Transportation Union and because of a threatened strike of Bethlehem Steel Company by the United Steelworkers of America, which did in fact materialize on August 1, 1971. Carrier argues that the strike and threatened strike "affected the business of the Lehigh Valley Railroad", and therefore there was no violation when it gave Brown 16 hours notice rather than 5 working days.

This record contains no evidence that as of July 23, 1971 the strikes in question produced a suspension in Carrier's operations in whole or in part; neither did they render Claimant Brown's work non-existent nor impossible of performance. In other words no such "emergency" existed as is contemplated by the "emergency layoff provisions" of the August 21, 1954 Agreement. In these circumstances 5 working days notice should have been given pursuant to Section 4 of Article IV of the Signalmen's Agreement and Claimant Brown who received less notice is entitled to compensation. Accordingly, Carrier shall compensate Claimant A. P. Brown for 5 days beginning July 26, 1971.

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 violated to the extent indicated in the Opinion.

A W A R D

Part (a) is sustained to the extent indicated in the Opinion.

Part (b)	1. Claim Dismissed	(W. Kowalow)
	2. Claim Dismissed	(C. P. Cannon)
	3. Claim Dismissed	(W. R. Wygrola)
	4. Claim Dismissed	(D. E. Allardyce)
	5. Claim Dismissed	(W. S. Quinn)
	6. Claim Dismissed	(D. N. Spigarelli)
	7. Claim Dismissed	(J. E. Herda)
	8. Claim Dismissed	(L. J. Dowd)
	9. Claim Dismissed	(F. X. Jewell)
	10. Claim Denied	(W. F. Bubick)
	11. Claim Dismissed	(G. J. Fech)
	12. Claim Sustained	(A. P. Brown)
	13. Claim Dismissed	(R. Azzalina)
	14. Claim Dismissed	(C. T. Heitzman)
	15. Claim Dismissed	(H. McPherson)

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.