

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20970
Docket Number SG-20831

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On or about November 21, 1972 the Carrier violated the current Signalmen's Agreement, particularly the 5th paragraph of Rule 17 when it would not place Mr. A. E. Nenn, Sig. Mtnr. at Pt. Washington, Wis. on the permanent position of Ldr. Sig. Mtnr. at Appleton, Wis. and allow him to work the temporary position of Sig. Mtnr. at Oshkosh, Wis., pending return of J. A. Meyer.

(b) The Carrier now be required to place Mr. Nenn per his request as stated in his letter of Sept. 14th and 27th, to the Sig. Supr., to the position as stated in (a) above.

(c) The Carrier be required to compensate and/or reimburse Mr. Nenn for all compensation he may have lost by this violation. [Carrier's File: 79-13-16]

OPINION OF BOARD: This dispute relates to whether or not an employee may exercise several options, seriatim, upon being displaced, under two different Rules. The Rules are:

"RULE 17 - Except in the Central Seniority District, incumbents of existing positions and those subsequently established in excess of one year, may elect to retain their positions or within fourteen consecutive calendar days exercise displacement rights if changes occur under the following conditions of their positions:

- (a) Assigned days off duty.
- (b) Headquarters.
- (c) Territorial limits.
- (d) Starting time, except due to Daylight Saving Time.

If positions are vacated as provided for in this rule it will be bulletined as a new position.

Note: At points where the territorial limits are changed and there are two or more positions of the same seniority class involved, one or more of which is abolished, the senior employee

"will make the first selection. The remaining employee or employees of the same seniority class may do likewise in seniority order."

"RULE 36 (c) - Except as provided in rule 35 (b), when force is reduced, position abolished, or employees displaced, the affected employee must advise proper officer within three working days from date of bulletin his choice of displacement, and, except in central seniority district he will be advised prior to position being abolished as to whom he may displace under rules applicable, so that such action may be taken on working day following date position is abolished. In the central seniority district the affected employee may displace any junior employee of his class assigned to a permanent position. Outside the central seniority district the affected employee may displace any junior employee in his seniority class assigned to a permanent position with headquarters in camp cars, or assigned to crews not engaged in the maintenance of a section, plant or assigned to a shop, or position under direction of Supervisor Communications & Signals or on a second or third trick position on a section or plant. Illinois and Northwestern seniority district employees may displace any one of the three junior employees, Western and Northern seniority district employees may displace any one of the seven junior employees of the same class holding a permanent position assigned to a section, shop, plant or relief position.

An employee having displacement rights may displace a junior employee on a temporary or 'pending return' position provided he currently makes a 'technical' displacement on a permanent position. An employee 'technically' displaced under provisions hereof will retain the right to remain on the assignment and will not be required to exercise displacing rights until actually displaced."

Petitioner argues that Claimant, having taken action under the shorter option (Rule 36 (c)) may not be denied the right to subsequently exercise the 14 day option. It is urged that Carrier's position would result in giving a senior man only three days in which to make a displacement, whereas a junior man would have fourteen.

It is interesting to note that in its submission, Petitioner states:

"Upon receipt of Bulletin #17, Mr. A. E. Nenn, the incumbent

"of the Leading Signal Maintainer position at Port Washington, the first position listed thereon as being abolished, exercised his displacement rights under the Note at the end of Rule 17, and within the three-day period in Rule 36, by placing himself on.....the Signal Maintainer position at Port Washington....."

It might be construed that the Organization is saying that his one choice was exercised under both rules. However, in subsequent argument Petitioner insists that Claimant has the right to make three different choices, as indicated in the Statement of Claim.

We cannot accept the logic of Claimant. Although it is true that he had to make a choice under either Rule, both being applicable to the situation, he could not make three choices. After he opted for the Port Washington position, he was no longer in a displaced posture and able to exercise any further option. Additionally, it seems evident that he did exercise the option contained in the Note to Rule 17, supra, and certainly had no basis for then attempting to use the same Rule's fourteen day provision. Even if, as Petitioner contends, his choice was made pursuant to Rule 36 (c), there is no basis whatever for a second and third option to be exercised since he was no longer being displaced. He must be confined to one rule application. The Claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 27th day of February 1976.