

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21604
Docket Number SG-21530

Robert J. Ables, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railroad Signalmen
(
(Central of Georgia Railroad Company

STATEMENT OF CLAIM:

Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

In behalf of S. L. Brooks, Assistant Signalman, Central of Georgia, signal gang #6, B. F. Jones foreman account of not being awarded temporary Signalman's job in gang #6. Mr. S. L. Brooks was the senior assistant signalman on Central of Georgia that bid on this temporary job. Claim is for the difference between his present assistant signalman rate of pay and what he would have received as signalman and is to be retroactive for 60 days from this date and is to continue until Mr. Brooks is awarded the temporary signalman's job on gang #6.

Carrier has violated the present Signalmen's Agreement with the Central of Georgia Railroad particularly rule 30, paragraph 1, page 7. Also the system gang agreement of May 1, 1974 paragraph 2, page 1 which states how gang positions now in existence will be maintained.

This temporary signalman job on gang #6 was advertised on Bulletin S-15 dated July 22, 1974 and has not been filled at this date. There are only three signalmen working on gang #6 with temporary signalman job still open. /Carrier's file: SG-87/

OPINION OF BOARD: The claimant and his supporting Organization are incorrect about the Carrier having violated Rule 30 of the Signalmen's Agreement and they could have been more precise in their statement that the Carrier had violated the agreement with respect to the size of the signal gang. Therefore, a fair question is raised in this dispute whether the Organization has technically perfected its claim. But the statement of violation is sufficiently clear and the supporting facts are strong enough to justify sustaining the claim with respect to violation of the System Signal Gang Agreement, dated May 1, 1974.

Basically, this claim concerns the size of signal gangs. The System Signal Gang Agreement dated May 1, 1974 calls for not less than one signal gang foreman, one leading signalman and four signalmen.

The problem in this dispute is that when a temporary signalman's position was advertised, there were no qualified candidates for the job. Assistant signalman S. L. Brooks bid for the job but clearly was not qualified. He was the only one to bid for this job.

On these facts the Organization states that the Carrier violated the Signalman's Agreement,

"particularly Rule 30, paragraph 1, page 7.
Also the system gang agreement of May 1, 1974,
paragraph 2, page 1 which states how gang
positions now in existence will be maintained."

The union takes the position that there is a firm agreement with respect to the minimum size of the gang and that it was management's obligation to see to it that the pipe line was full so that there would be qualified signalmen to meet this requirement. The Carrier argues that there was no obligation to put an unqualified man in the job whatever agreement was reached on the size of the signalmen gang.

Rule 30.1., on which the claimant particularly relies, provides:

"Assistants shall have the right to promotion in the order of their seniority to a position of signalmen or signal maintainer if a position is open and they can qualify in less than eight periods of 130 days each..."

As there is no evidence - not even an allegation - that the claimant was qualified or could qualify in less than eight periods of 130 days each as of the time the signalman's job was temporarily vacant, there is no basis to find that the Carrier violated this rule in this dispute.

As to that part of the claim which refers to the System Gang Agreement of May 1, 1974, it would have been considerably better for the Organization to have written a complete English sentence. The words as they stand lack a verb and an object. There can be no mistaking however that the Organization intended the words to mean that the Carrier violated the System Gang Agreement of May 1, 1974 because those

words follow immediately after the preceding sentence which charges, in a complete sentence, that the Carrier violated the Signalmen's Agreement and the word "Also" connecting the two thoughts makes it clear that the alleged contract violation includes the special agreement of May 1, 1974 as distinct from the basic signalmen's agreement which was effective July 1, 1950. Most important however, the claimant and the Organization throughout the dispute on the property argued that the Carrier violated the agreement with respect to the size of the signal gang, therefore, there was no prejudice to the Carrier because there was no confusion possible about the basis for the claim.

On the merits, the job in issue would have lasted only a few days and there is some suggestion in the record that qualified signalmen who would have been awarded the job that was bulletined did not take the trouble to bid for it. Only Brooks the unqualified signalman bid for the job.

The overriding question raised by this dispute is the obligation of the company to do what is necessary to see to it that there are enough qualified employes to round out the requirements for meeting the System Signal Gang Agreement.

There is no evidence in this dispute of bad faith by the Carrier with respect to training and promoting qualified signalmen, but the opportunity to sabotage the special agreement of the parties with respect to the size of the signal gang is evident if it is considered that it is the company that has control of training and promoting signalmen employes. If there were no penalties against a Carrier for not having qualified signalmen to fill jobs in accordance with the Signal Gang Agreement, management would clearly have the opportunity for mischief.

The Organization asks a fair question in this dispute. Having granted the Carrier certain relief from then existing agreements after good faith negotiations, the Organization asks what it would get in return, with respect to the size of the system gang, if the Carrier were free to decide not to put an employe in a vacant job, either because he is unqualified or for any other reason. The negotiations of the parties do not suggest this reserved right of the management and, more importantly, the agreement itself does not permit such degree of discretion in management. That agreement provides precisely for the kind and number of employes which shall constitute a system gang. It is the Carrier's responsibility to meet that requirement. Having failed to satisfy that requirement, the Carrier has violated the agreement.

The remedy cannot be, as requested by the claimant, that he be awarded the temporary signalman's job because he was unqualified to perform the work. The sanction instead will be a requirement to pay to the claimant who was the senior man bidding for the job the pay he would have earned if he had been awarded the job.

As anomolous as this penalty is, under circumstances where the person receiving the penalty pay was not qualified to perform the work, the integrity of the agreement of the parties and the preservation of their historic working relationships, support the remedy imposed.

The pay shall be allowed as claimed until December 2, 1974 at which time the regular signalman returned to his job, thereby terminating the temporary vacancy which is the subject of this claim.

The decision in this case to sustain the grievance with respect to violation of the "System Signal Gang Agreement" follows very closely the decision in Award No. 21532 on May 19, 1977 by William G. Caples, referee before this division of the National Railroad Adjustment Board, in a case almost identical on the facts.

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 Carrier did not violate Rule 30.

That the Carrier did violate the System Signal Gang Agreement of May 1, 1974.

A W A R D

Claim sustained in part. Carrier shall pay claimant retroactively in accordance with this opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls

Dated at Chicago, Illinois, this 29th day of July 1977.

