NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22845
Docket Number SG-22852

THIRD DIVISION

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

On behalf of R. L. Jackson, assigned to a temporary signalman job headquarters Sheffield, Alabama, on Bulletin S-97, dated September 19, 1977, for eight (8) additional hours at the time and one-half rate for each day he is held off his bulletined assignment and required to work the second shift Signal Maintainer position at Sheffield Retarder Yard."

/General Chairman file: SR-7. Carrier file: SG-292/

OPINION OF BOARD: On September 5, 1977, Carrier issued Bulletin No. S-96 in which among the several assignments announced and positions advertised for bid, the Carrier simultaneously appointed Mr. J. W. Raper, a first trick Signalman headquartered at Sheffield, Alabama to the temporary vacancy of Signal Maintainer at Town Creek, Alabama, and posted for bid Raper's position at Sheffield on a temporary vacancy basis. On September 19, 1977, Carrier issued Bulletin S-97 announcing among other items the appointment of the Claimant, Mr. R. L. Jackson, then a second shift Signal Maintainer at the Sheffield Retarder Yard to the temporary Signalman's position vacated by Raper. In this same Bulletin, Carrier put up for bid the Claimant's second shift position. Claimant was advised at first that unless otherwise instructed, he would report to his new first shift Signalman's position on September 26, 1977, but as the bidding period established by Bulletin S-97 was not due to expire until September 29, 1977, the Claimant was subsequently instructed to remain on the Sheffield Yard Maintainer's position until this latter date. Inasmuch as no signal employe bid for Claimant's vacated position under Bulletin S-97, the Carrier sought to get the Assistant Maintainer at Sheffield to work the Maintainer's position, but he refused on the basis he was medically incapable of performing the work. According to the Carrier, because no other qualified employes were available to fill this vacancy, it held the Claimant in the second shift Maintainer's position in order to protect the requirements of the service and at the same time it blanked the first shift Signalman's position at Sheffield.

By Bulletin S-106, dated January 23, 1978, the Signal Maintainer's position at Town Creek, assumed by Raper on a temporary basis was bulletined as a permanent position. In turn, the temporary Signalman's position at Sheffield was also bulletined as permanent. In Bulletin S-107 dated February 6, 1978, the Claimant was appointed to the permanent Signalman's position and in turn the Claimant's permanent second shift Maintainer's position was advertised for bids. On February 21, 1978, Carrier announced in Bulletin S-108 the appointment of Mr. J. R. Scott to Claimant's former second shift Maintainer position at Sheffield and as a result Claimant was allowed to report to the first shift Signalman's position at Sheffield on February 27, 1978.

The Organization alleges that Rules 4, 34, but primarily 20(c) of the Controlling Agreement bearing effective date of February 16, 1948, was violated when Carrier failed to allow Claimant to assume the first shift Signalman's position at Sheffield on or before October 16, 1977. Rule 20(c) reads as follows:

ASSIGNMENTS - RULE 20

(Revised - effective April 1, 1942)

> (c) Transfer of successful applicants to new assignments will be arranged for, unless prevented by special circumstances, within twenty (20) days after close of the bulletin. Employees failing to go to new positions within this period, unless prevented by illness, shall take leave of absence, and failing so to do may thereafter place himself only by bidding on other vacancies.

The Organization alleges that Carrier's inability to fill the Claimant's second shift Maintainer position is not, as the Carrier has maintained, a "special circumstance" as contemplated under Rule 20(c), but rather a very common circumstance. The Organization argues that Carrier's failure to fill the second shift Maintainer's position is directly attributable to the Carrier's unwillingness to consummate an agreement with the Organization concerning the establishment of an apprentice training program for signal employes that would provide a source of qualified signal forces sufficient to meet Carrier's needs. But notwithstanding this fact, the Organization asserts, Carrier could have moved to fill Claimant's second shift Maintainer position by posting the position on every subsequent Bulletin following Bulletin S-97, or by hiring additional persons for its Signal Department and/or by working the existing signal force overtime, none of which the Carrier elected to do. It is the Organization's position

that Carrier is obligated to have a sufficient number of available signalmen on its roster to meet its needs which in the instant case, the Carrier did not have. Therefore, the Organization reasons, the Carrier also violated Agreement Rule 34 when in keeping Claimant off his bulletined assignment (first shift Signalman's position at Sheffield, rest days Saturday and Sunday), Claimant, was in effect, required to suspend work on said bulletined assignment in order to avoid overtime. In support of its position on this point, the Organization cites Third Division Award No. 7346 which reads in relevant part as follows:

> "By almost a solid line of authority the Board is committed to the doctrine that an employe may not be used outside his regular assignment to protect another position for the purpose of avoiding payment of punitive rates, because, to do so, weakens the job protection and security to be found in seniority, and, equally important, the bulletining of positions as to hours of work and job duties would have little meaning."

It is this line of argument, the Organization asserts, that well supports its demand in the case at bar, for eight (8) hours at the time and one-half (1½) rate for each day Claimant was held off his bulletined assignment.

Finally, it is the contention of the Organization that the "special circumstances" argument invoked by Carrier here constitutes an affirmative defense which the Carrier has the burden of proving. Instead of proving the existence of "special circumstances", the Organization alleges Carrier merely relied on argument that constitutes nothing except excuses for failing to have an adequate force of trained signal employes.

The Carrier notes its Sheffield facility, a computer controlled hump classification yard containing 45 miles of track, was designed and constructed to classify up to 1800 cars each day, but presently classifies between 2100 and 2300 cars per day. Because of this high volume of traffic it is imperative, the Carrier argues, that the second shift Maintainer's job be filled in order to meet the requirements of service. The Carrier asserts that "special circumstances" as that contemplated by Rule 20(c) arose and became operative when no other signal employe bid on the Claimant's second shift Maintainer position. It is the Carrier's position that while the term "special circumstances" is not defined, reason and logic dictate that operational requirements would be the primary criterion to determine whether "special circumstances" exist. Furthermore, the Carrier argues, even if Rule 20(c) did not provide for delays due to "special circumstances", in its place a test of reasonableness would have to be applied. Such a test of reasonableness, the Carrier notes, has been applied by this Board in other cases.

Insofar as the first shift Signalman's position which was bid successfully by the Claimant is concerned, the Carrier stated that the position was one (1) of three (3) headquartered at Sheffield. Because of the nature of the Signalman's duties at Sheffield and the fact that there were some eleven (11) other signal maintainers stationed between Chattanooga and Memphis, it was not of pressing need, the Carrier maintains, to fill the Signalman's job especially since it had other forces to perform the required work.

Carrier further argues that based on pertinent language in the following three (3) Third Division Awards, the Claimant was never "assigned" to the first shift Signalman's position until date of February 27, 1978, and therefore was not entitled to either the assigned hours or the rest days of that position until he actually commenced working the position. In Award 12315, Carrier cites the following language: "... the words 'having a regular assignment' means more than bidding in a position and having been assigned; there must be 'actual acceptance by physically taking over the duties...'" And in Award 2389, Carrier cites the following: "positions are not to be construed as assigned until such time as work is actually begun thereon," and finally in Award 19671: "an employee, in order to acquire the rights of an occupant of a position, must commence work on such position." Thus, the Carrier concludes, because Claimant was not "assigned" to the first shift Signalman's position until February 27, 1978, he could not possibly have been required to suspend work on that position to absorb overtime or for any other reason.

Upon an exhaustive review of the record before us, this Board has given considerable thought to the central question posed here and that is, what meaning did the parties intend to impart to the term "special circumstances" within the context of Rule 20(c)? We find very little in the way of probative evidence in the record to use as a beacon in assisting us to divine what is and what is not a "special circumstance". Neither party has offered any bargaining history to elucidate what the parties intended by the language in question and neither party has presented specific instances or examples of what has qualified in the past as "special circumstances". Even the Carrier admits there is an absence of a definitional standard with regard to the term "special circumstances" as used in Rule 20(c). That being the case, it is our determination that this claim must be dismissed on the basis that both parties have failed to meet their burden of proof.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.