

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23319
Docket Number SG-23287

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of
Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of Mr. P. D. Langham account not being awarded Signalman position with headquarters at Paducah, Kentucky." [Carrier file: 135-703-168 Spl. Case No. 342 SIG/

OPINION OF BOARD: Claimant, who was not awarded a shop signalman position at Paducah, Kentucky, seeks assignment to that position and \$3.00 per day for each day he has been denied the position. After an incumbent employee vacated the shop signalman position, the Carrier solicited bids for the vacancy in the September 7, 1978 bulletin. On September 11, 1978, claimant filed a bid for the vacancy. Before any employee was awarded the shop signalman position, the Carrier, on September 28, 1978, cancelled the previous notice. On October 19, 1978, the Carrier advertised a new and separate relief signalman position for the Kentucky Division which was eventually awarded to another employee.

The Employees contend the Carrier failed to properly abolish the shop signalman position because the Carrier failed to give affected employees five days notice that the position was eliminated as required by Rule 18(a). Since claimant was apparently the senior bidder for a position which was never abolished, the organization asserts that claimant is entitled to the position. The organization claims the Carrier had an improper motive for cancelling the position, i.e., the Carrier could not persuade a favored employee to bid on the job. Also, the organization contends the new relief signalman position was substantially similar to the cancelled position demonstrating that the Carrier was creating a new position just to avoid awarding the shop position to the claimant. Lastly, the Employees rely on Rule 31(d) for our authority to order the Carrier to pay claimant \$3.00 per day for each day he has been denied the position of shop signalman.

The Carrier asserts that the shop position was properly abolished in accord with the agreement. It is management's prerogative, according to the Carrier, to determine the type and number of positions to effectuate efficient railroad operation. In this instance, the Carrier objectively decided that a relief signalman position was more crucial to the efficiency of railroad service than the shop position. Lastly, the Carrier points out that claimant was never awarded the shop position because the vacancy was abolished before an award was made to any bidder and so the claimant has suffered no damage under Rule 31(d).

While both parties to this dispute have raised many arguments, the resolution of this claim turns on the application of Rule 18(b) which states:

"(b) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement." (Emphasis added)

After carefully reviewing the entire record and the applicable rules, we find no evidence that the Carrier created the relief signalman position for the purpose of either reducing pay rates or evading the application of any pertinent rule. The relief position is actually better paying than the shop position which was cancelled. There is no violation of the Rule 18(a) notice requirements since the shop position was vacant and no employee had been awarded the job at the time the position was abolished. Claimant was not detrimentally affected by the abolition of a position he did not occupy. Therefore we must 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 Employees involved in this dispute are respectively Carrier and Employees 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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

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