

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

Case No. 1

"Claim of the General Committee of the Brotherhood of Railroad Signalmen, on the Chicago & North Western Transportation Company, that:

(a) On or about July 5, 1985, on bulletin #7 the Carrier violated the current Brotherhood of Railroad Signalmen's Agreement, as revised, especially Rule 62 when it assigned J. A. Horad, Asst. Signal Mtnr. to the position of Asst. Signal Mtnr. Job #007-19 Canal St. Chicago.

(b) The Carrier now be required starting July 22, 1985, the date of transfer, as stated on bulletin #7 compensate Mr. Horad at the Singal Mtnrs. rate of pay, or to anyone else that holds this position. This is a continuing claim until this position is re-classified to its rightful classification of Signal Maintainer Canal St." General Chairman file: G-AV-58. Carrier File: 79-85-14

Case No. 2

"Claim of the General Committee of the Brotherhood of Railroad Signalmen, on the Chicago & North Western Transportation Company, that:

(a) On or about October 1st and 5th, 1985 the carrier violated the current Brotherhood of Railroad Signalmen's Agreement, as revised, especially Rule 62 when it abolished three (3) Signalmen's positions, Job Nos. 005-06, 009-46 and 006-22 and rebulletined them at Asst. Signalmen.

(b) Carrier now be required, starting November 4, 1985, the date of transfer as stated on Bulletin #10 compensate Mr. Hoard, Mr. Carver and Mr. Slatter, at the Signalmen's rate of pay, or to anyone else that holds these positions. This is a continuing claim until these positions are reclassified to its rightful classification of Signalmen on the St. Francis, Wis. crew, Wis. Travel Crew and the Nelson, Ill. crew." General Chairman file: G-AV-66 Carrier file: 79-85-17

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Rules 2(g) and 3 provide for two classifications as follows:

"Signalman or Signal Maintainer [Class 2]: A man qualified by experience and training and assigned as a Signalman or Signal Maintainer will be so classified. When assigned to the maintenance of certain section, shop or plant, the classification will be Signal Maintainer; when assigned to a gang or crew, the classification will be Signalmen.

Assistant Signalman or Assistant Signal Maintainer [Class 3]: An employee in training for a position of Signalman, working with and under the direction of a Signalman, will be classified as an Assistant Signalman or Assistant Signal Maintainer, according to the classification of the man under whom working."

Rules 31(a) and 47(a) provide for 24 months of training for Assistant Signalmen, after which such employees are promoted and establish seniority in Class 2.

Rule 35(f) concerns maintenance of status as Signalman, as follows:

"Employees holding seniority in Class (2) who cannot displace in that class will be permitted to displace an assistant, subsequent to which their status for pay purposes will be the same as a signalman. Employees who do not and/or cannot exercise seniority rights will be considered furloughed on the eleventh (11th) day after having been affected by a job abolishment or displacement."

Rule 59 reads as follows:

"Established positions: Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing rates of pay or evading application of these rules."

Because of a realignment of forces owing to attrition, a number of Assistant Signalmen positions were reclassified to Class (2) positions to accommodate existing Signalmen. The Claimants were all newly hired employees and were hired as Assistant Signalmen, in keeping with the Rules quoted above. The Organization argues that this violated Rule 59 in that "established positions" were "discontinued . . . for the purpose of reducing rates of pay or evading application of these rules." The undisputed factual record lends no support to this view. The Claimants were treated as provided in the Rules for newly hired employees, and there is no showing of any attempt by the Carrier to discontinue positions for the reasons stated in Rule 59.

Third Division Award No. 20976, involving the same parties, is to similar effect. That Award states as follows:

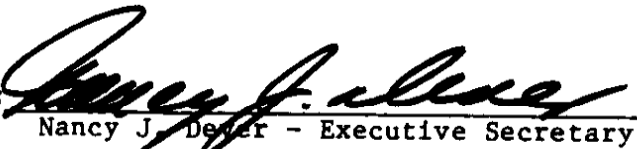
"In order to prevail in its principal contentions it is necessary, first, for the Organization to show that the change was made for one of the prohibited reasons, that is, reducing rates of pay or evading application of the rules . . . Obviously, the Organization must produce more than an assertion that Carrier acted for the purpose of evading the application of the Rules. It must introduce evidence of such a purpose and on the record before the Board it has failed to do so."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.