

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (Conrail))

STATEMENT OF CLAIM: "Claim on behalf of M. G. Nieberger 867498, Signalman with headquarters at Rutherford, Penna.

A. Claim that the Company violated and continues to violate the current Agreement between Consolidated Rail Corporation and Brotherhood of Railroad Signalmen, particularly Rule 3-G-1 (c), when on October 5, 1988, they allowed Asst. Supvr. Signals D. Henry voluntarily return to the position of Signal Maintainer, Section 13 with headquarters at Rutherford, Penna.

B. Claim that Signalman M. G. Nieberger be paid the difference of Maintainer and Signalman rate of pay for all straight time and overtime made by D. Henry from October 5, 1988 and Signalman Nieberger be returned to the position of Maintainer on Section 13. Carrier file SG-26. BRS file No. 7719-CR."

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.

The Claim herein deals with an alleged improper displacement. There is no dispute with respect to the relevant facts.

Mr. Henry, who had been a Signal Maintainer, was promoted on November 28, 1984, to an Assistant Supervisor. In that role he was covered by the United Railway Supervisors Association Agreement. He retained his seniority under the BRS Agreement in accordance with Rule 3-G-1 of that Agreement. On October 4, 1988, he was displaced from his Supervisor's position and since he was unable to displace to another Supervisor's position without necessitating

a change in residence, was placed in a furloughed status. He then exercised his seniority under the Agreement and displaced Claimant, triggering the dispute herein. The relevant Rule provides as follows:

"3-G-1. (a) Employees covered by this Agreement who have been or are hereafter appointed to a supervisory or non agreement position, shall retain previously acquired seniority in the seniority district from which appointed and shall continue to accumulate such seniority while occupying such a position.

(b) Employees appointed to such position subsequent to the effective date of this Agreement shall be subject to the maintenance of membership requirements of the Union Ship Agreement in order to retain and accumulate seniority, except when they are required to belong to another union.

(c) Employees who involuntarily return from appointed positions may, within five (5) working days, exercise seniority over any junior employee in the district in which they hold seniority. Employees returning voluntarily may only exercise seniority over the junior employee in the class from which promoted or a lower class."

The Organization takes the position that Mr. Henry voluntarily returned from his promoted Supervisor's position to displace Claimant in violation of Rule 3-G-1. It is argued that his move was voluntary and hence covered by Section (c) of the Rule; he could have displaced under the URSA Agreement by changing his place of residence and hence the choice was "voluntary." He in fact should have displaced the junior employee and not Claimant.

Carrier notes, initially, that Claimant could not displace within his own class without changing residence and hence after Mr. Henry's move displaced to a lower classification. As a major point, Carrier argues that Mr. Henry's move was involuntary; he was in a furloughed status after he was displaced since he had no place to go as a Supervisor without change of residence. Carrier relies in part on Second Division Award 1517 which provides:

"Foremen as such are not subject to the controlling agreement. However, since Mr. Kiebler had been notified that he would be furloughed it cannot be said that he relinquished his supervisory position voluntarily." In these circumstances he was privileged to exercise his seniority as a Carman and was therefore entitled to the same consideration accorded the other carmen who transferred from Collinwood to Linndale under the Memorandum of Agreement dated April 28, 1949." (Emphasis added)

The sole issue before this Board is the question of whether Mr. Henry's displacement of Claimant was based on a voluntary or involuntary move on his part. The Board notes that there was no practice alluded to by either party dealing with this issue. The critical finding in this dispute rests on the fact that Mr. Henry was displaced under the URSA Agreement and he was in fact thereafter in a furloughed state under that Agreement.

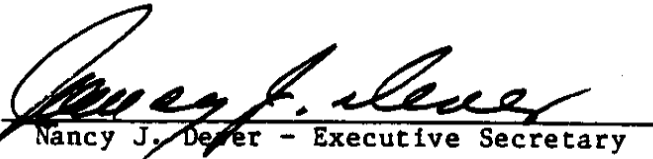
The Organization here may only construe its own Agreement and not that of another craft. It must be concluded that Mr. Henry did not "voluntarily" leave his Supervisory role but was forced to do so since he had been furloughed. At the point that he elected to return to the Signalman's craft, rather than remain furloughed, he came under the provisions of Rule 3-G-1. As indicated in Second Division Award 1517, Henry's action must be considered to have been involuntary. Based on the reasoning above, it must be concluded that Henry's displacement of Claimant was in accordance with Section (c) of the Rule and Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.