

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29765
Docket No. SG-29530
93-3-90-3-542

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC.SP):

Claim on behalf of J. F. Crane and B. W. Borrer, for payment of \$3108.12 per month, beginning October 18, 1989, and continuing until this dispute is adjudicated, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 408 (a) and (o), when it erroneously abolished their assigned positions and did not allow or permit them to properly displace." Carrier file 486-28-A. BRS Case No. 7967-SPTC.SP.

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 employe 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.

On or about October 18, 1989, the Carrier abolished two of the four Signal Technician positions located at San Antonio, Texas. More specifically, the Carrier abolished the two Signal Technician positions at San Antonio held by the two most junior incumbents. One of these junior Signal Technicians, Claimant Crane, filed for a Railroad Retirement Disability annuity and subsequently received

such an annuity. Claimant Borrer, attempted to exercise his seniority to a Signal Technician position at Houston, Texas. After the Carrier barred his attempted displacement, Claimant Borrer exercised his seniority to an Assistant Signalman's position and, while the record is unclear, he apparently obtained a Signalmen's position sometime later.

The Organization asserts that Claimants should have been allowed to displace the junior employees in the classification of Signal Technician pursuant to Rule 408(o). The Organization submits that it was undisputed that Claimants held more seniority than the junior worker at Houston. The Carrier contends it properly disallowed Claimant Borrer's attempted displacement to the Signal Technician position because all Signal Technician jobs are appointed positions pursuant to Rule 100.

As the Carrier asserts, when Signal Technician positions are bulletined, the Carrier retains the prerogative to appoint an applicant pursuant to Rule 100. However, once an employee has been appointed to a position within the classification of Signal Technician, Rule 100 is no longer applicable.

Displacements within the class of Signal Technician are governed by Rules 408(a) and 408(o) which provide:

408(a)

"When the force in a gang or shop is to be reduced, positions of the junior men in each class effected will be abolished. When positions are abolished, not less than five (5) working days' advance written notice will be given to the employees occupying the positions at the time the abolishment notices are issued. The day such notice is given will be counted as one of the five (5) working days, provided notice is received before or during the working hours of that work day."

408(o)

"In the event position of Signal Technician is abolished, or the employee is displaced by a senior employee through the exercise of seniority, incumbent thereof may displace only the junior employee of the highest seniority class of the seniority district where seniority was established at the time assigned to the position of Signal Technician. If

unable to displace in such class, the employee may displace in accordance with Paragraph (c) and (d) of this Rule."

Because of the language in Rule 408(a) referring to "gang" and "shop", there is some doubt about whether Rule 408(a) is directly applicable to Signal Technicians who are stationed neither in shops nor gangs. The Organization argues before the Board that the Carrier may have violated Rule 408(a) because it should have abolished the two Signal Technician positions occupied by the most junior incumbents on the seniority district instead of the positions occupied by the two most junior employees at San Antonio. This argument was not raised on the property and this Board need not address or consider whether Rule 408(a) is applicable to Signal Technicians and, if applicable, whether the Carrier violated the Rule.

Next, we turn to Rule 408(o) which expressly covers Signal Technicians. Rule 408(o) clearly and unambiguously provides that a displaced Signal Technician may only displace the junior employee of the highest seniority class of the seniority district where the displacing employee's seniority was established.

In this case, there was no dispute on the property that Claimant could displace the junior Signal Technician on his district at Houston, Texas. Rule 408(o) clearly sets the path by which a displaced Signal Technician must exercise his seniority. Claimant Borrer, in this case, tried to follow that path but was thwarted by the Carrier. Therefore, the Carrier breached Rule 408(o) when it denied Claimant's attempt to displace the junior Signal Technician at Houston.

Claimant Borrer is entitled to receive compensation measured by the difference between the rate of the Signal Technician position he would have held and the rate of the position that he actually held from the claim date continuing until the violation was or is corrected.

On the other hand, Claimant Crane's claim is dismissed, with prejudice. Even if the Carrier also breached Rule 408(o) with respect to Claimant Crane, he did not lose any earnings because he was receiving a disability annuity.

This Board emphasizes that this decision herein is restricted to the peculiar facts in this case.

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Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.