



Award Number 17667

Docket Number SG-18259

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**PENN CENTRAL COMPANY—NORTHERN REGION
(Formerly New York Central Railroad Company—Northern
Region)**

STATEMENT OF CLAIM: Claim of the General Committees of the Brotherhood of Railroad Signalmen on the New York Central Company (New York District, Boston and Albany Division, Eastern District, Western District, Northern District, Southern District); the Cleveland Union Terminals Company; and Indiana Harbor Belt Railroad, that:

- (a) Carrier violated the current Brotherhood of Railroad Signalmen's Agreement covering Retarder Technicians, Inspectors and Foremen employed in the Signal Department, particularly Rule 10, when the position of Relay Inspector advertised on Bulletin No. 9, dated November 24, 1967, was awarded to Signal Maintainer-Test K. J. Lightfoot, having craft seniority dating from July 2, 1941.
- (b) Carrier be required now to pay Signal Maintainer-Test E. V. Moyes the difference in rates of pay between that of Signal Maintainer-Test and Relay Inspector, beginning December 18, 1967, and continuing until he is rightfully assigned to the position of Relay Inspector.
- (c) Carrier be required now to allow the claim as presented account Mr. J. B. Kuhnle, Assistant General Manager—Employee Relations, failed to render a decision, within the time limits provided in Article V, Section 1, of the August 21, 1954 National Agreement on the claim which was appealed to him by General Chairman R. T. McGill on January 8, 1968. [Carrier's File: Sig. A-5.4.]

EMPLOYEES' STATEMENT OF FACTS: This dispute was initiated because Carrier did not assign the senior bidder to an advertised Relay Inspector position. A procedural issue later arose because Carrier did not comply with the time limit provisions of Article V of the August 21, 1954 Agreement.

Carrier advertised the Relay Inspector position in Bulletin No. 9, dated November 24, 1967, copy of which is attached hereto as Brotherhood's Exhibit No. 1. As shown by Brotherhood's Exhibit No. 2, the position was assigned to Mr. K. J. Lightfoot.

It would seem that we are completely apart on this case insofar as the applicability of the Time Limit Rule. In order to clarify the Carrier's position more, it should be first pointed out that due to the nature of the case, it is our position that the Time Limit Rule is not applicable under any circumstances; and secondly, even if it were applicable, such was waived under the circumstances that revolved around the meeting at my office on January 18 and 19, 1968. This position is more fully explained in my letter of March 19, 1968, and remains my position in this case.

Therefore, your request for the allowance of the initial claim remains declined.

Very truly yours,

/s/ J. B. KUHNIE, JR.
Asst. General Manger
Employee Relations"

(Exhibits Not Reproduced)

OPINION OF BOARD: This dispute involves the question of whether or not the Controlling Agreement of the Retarder Technicians, Inspectors and Foremen employed in the signal department extends seniority rights to employees under the Craft Agreement of the signal department. Pertinent portions of the Retarder Technicians, Inspectors and Foremen's Agreement are as follows:

"RULE 1—CLASSIFICATION

These rules will govern basis of pay and working conditions of the following classes of employees:

RETARDER TECHNICIAN: An employee responsible for the maintenance, adjustment, repair and replacement of all electronic and electromagnetic components associated with automatic switching and automatic retardation of cars in a classification yard, including wayside equipment for cab signals. He may at times supervise other Signal Department employees in connection with his duties.

"SIGNAL INSPECTOR: An employee whose predominant duties consist of testing and inspecting signal systems, signal facilities, signal apparatus and appurtenances and other duties associated therewith. He may at times supervise other Signal Department employees in connection with such testing or inspection.

"RELAY INSPECTOR: An employee whose predominant duties consist of testing and inspecting signal systems, signal facilities, signal apparatus and appurtenances and other duties associated therewith. He may at times supervise other Signal Department employees in connection with such testing or inspection. He will report to the Signal Inspector on the territory to which he is assigned.

"ASSISTANT SIGNAL INSPECTOR: An employee whose predominant duties consist of assisting either the Signal Inspector or Relay Inspector in the performance of their duties on territory assigned. Note: This paragraph does not prohibit an Assistant Signal Inspector from working alone at times or with Signal Maintenance or Construction employees.

It is the Carrier's contention that the language in Rule 10A requiring that notice be sent to employees under the craft Agreement was for informational purposes only and in no wise obligated the Carrier to follow craft seniority in filling positions under the Inspector's Agreement.

While we find no basis to conclude that the language of Rule 10 A, relative to sending notices of vacancies to employees under the craft agreement, was included purely for information to such employees, we likewise however find no basis to conclude that the parties to the Agreement intended that seniority under the craft Agreement would become contractually binding upon the Carrier in filling vacancies, particularly when this rule is read in conjunction with Rules 6 and 7 of the Agreement.

We do not question the contractual abilities of the parties to extend terms of the Agreement to persons not the primary beneficiaries, but in such instances the extension must be clear and unambiguous. The language made the basis of this claim lacks the clarity necessary to bring employees under the craft Agreement within the Inspector's Agreement.

The Organization further contends that Article V, Section 1, under the August 21, 1954, National Agreement with respect to disposition of the claims within 60 days was violated by the Carrier and that this claim should be sustained on that basis. While we have concluded that the provisions of the Retarder Technicians, Inspectors and Foremen's Agreement are not available to the Claimant herein the parties hereto were parties to the Agreement of August 21, 1954 which recognized the right of the Organization to file and prosecute claims ". . . for and on behalf of the employees they represent . . .," that Agreement, is therefore applicable to the instant claim.

There is no evidence in the record of the Organization's express agreement to extend the time limit on the handling of the claim. There is no dispute, however, that the Carrier did deny the claim in the March 19, 1968 letter. Since this is a continuing claim, the liability of the Carrier is limited to the date when the Organization received Carrier's denial, that is, March 19, 1968. See National Disputes Committee decision No. 16 and Awards 14950, 14904, 14603, and 14502.

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 August 21, 1954 Agreement was violated.

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While we find no basis to conclude that the language of Rule 10 A, relative to sending notices of vacancies to employees under the craft agreement, was included purely for information to such employees, we likewise however find no basis to conclude that the parties to the Agreement intended that seniority under the craft Agreement would become contractually binding upon the Carrier in filling vacancies, particularly when this rule is read in conjunction with Rules 6 and 7 of the Agreement.

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A W A R D

Claim denied in part and sustained in part in accordance with the
Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1970.

Dissent to Award 17667, Docket SG-18259

The Majority, consisting of the Referee and the Carrier Members, correctly find that Article V was not complied with. They likewise correctly find no basis for Carrier's contention that the language of Rule 10 A, relative to sending notices of vacancies under the craft agreement, was included purely for information to such employes. Unfortunately the Majority then proceeded to place the provision in a complete vacuum.

There is nothing, either expressed or implied, in either the Schedule (craft) agreement or the technicians agreement that limits the benefit of the first sentence of Rule 10 H of the technicians agreement to those who have previously established seniority under the technicians agreement.

The Majority's rejection of Claimant's superior seniority is repugnant to precedent and every known concept of seniority. Therefore, I dissent.

/s/ G. ORNDORFF
G. Orndorff
Labor Member