Award Number 110
Docket Number SG-69

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, COAST LINES

DISPUTE.—"Shall P. V. Russell, Signal Maintainer, Arizona Division, whose bid for position in signal repair shop at San Bernardino was rejected, be assigned to position?"

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

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

The parties to said dispute were given due notice of hearing thereon.

As result of a deadlock, Paul Samuell was called in as Referee to sit with this Division.

In 1932, the Santa Fe Railway opened a signal repair shop at San Bernardino, California. Prior thereto the repair work had been handled on the divisions. With the opening of the shop arrangements were made with the General Chairman of Signalmen to give each division representation in the shop, allowing the men to retain their seniority on the division from which drawn. However, the repair work from the Arizona division, on which this dispute arose, was not transferred until early in 1934. A. J. Joyner had been handling the work on the Arizona division since January 24, 1927. Concurrent with its transfer the following bulletin was posted on the Arizona Division on March 29, 1934:

> *"All concerned:*
>
> "Bids will be received in this office up to and including April 8th, 1934, for position of signalman in the Signal Repair Shop at San Bernardino, position on eight hour assignment, the usual rate of pay and working conditions at San Bernardino to apply.
>
> "Successful applicant must be conversant with the repair and adjustment of all apparatus used by the Santa Fe Coast Lines Signal Department. Position is to be available on May 1st, 1934.
>
> "(Signed) H. H. TISDALE,
> *Superintendent.*"

Bids were received from Signalmen A. J. Joyner (seniority date January 24, 1927) and P. V. Russell (seniority date January 19, 1923). The position was assigned to Joyner, who had been handling the work on the Arizona division since January 24, 1927. Committee for the employees protested, claiming Russell, being senior, should be assigned in accordance with Section 1 and 2 of Article 4 of the Agreement reading:

"SECTION 1. Promotions or transfer shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail; the Management to decide."

"SECTION 2. Employes are entitled to promotion or transfer only on the district over which their senority rights prevail."

The employees contend that Mr. Russell had sufficient ability and merit; that he had had extensive previous experience as a helper in construction and maintenance, and as an assistant signal maintainer and an assistant signalman both in construction and maintenance, and signalman and signal maintainer, on the

Santa Fe Coast Lines, and that he had complied with carrier's program of education for its Signal Department employees; that Mr. Joyner, who received the assignment, did not possess a service record in the Signal Department so long and so varied as that of Mr. Russell.

It is contended by the carrier that Russell did not have sufficient qualifications to perform relay repair work, which is the predominating kind of repair work in the shop; that relay repair work is most intricate; that while Russell may have had experience in the replacement and field adjustment of relays in the field, he was wholly lacking in actual repair of the same; that Joyner for the previous seven years had been engaged in work which related to the repairing of relays; that seventy-four percent of the work required of Joyner in the shop is that of repairing relays, all of which is sharply disputed by the employee.

The manufacturing as well as repairing of signal apparatus is very technical and important. It requires much experience and training to become a repairer. It is conceded by both parties that repair signal work carries much responsibility because the lives of the traveling public and many of the employees depend upon signals which are safely and properly maintained.

The only issue in this case is whether Mr. Russell has sufficient ability and merit. The issue is one of fact and not a construction or interpretation of rules.

The record in this case indicates that Mr. Russell is not experienced in the actual repairing of relays. The carrier contends that seventy-four percent of the work in the shop at San Bernardino is relay repair work, all of which is sharply disputed by the employee. The claimant admits, however, that it is not in a position to prove its contention on this point because the records are not available to it. Be that as it may, it seems fair to say that a substantial amount of relay repair work is done in this shop. The carrier in this instance had the responsibility of selecting an employee with sufficient ability and merit. We stated in a previous case, "this Division is reluctant to interfere with the decision so made by the carrier so long as it acts in good faith, is without bias or prejudice and indicates no disposition to purposely or carelessly evade or disrespect the rules as well as the spirit and intention thereof." There is nothing in the record to lead us to believe that the carrier is not acting in good faith or is biased or prejudiced or has carelessly evaded or disrespected the rules in this dispute. On the contrary, the record seems to indicate that Mr. Russell is not experienced in a substantial part of the work being carried on at this shop, and the carrier appears to be justified in deciding that he is without sufficient ability.

This Division is imposed with the duty of considering the entire rule with the facts as presented, and the record does not justify a substitution of this Division's opinion for that of the carrier.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 15th day of October 1935.