

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LONG ISLAND RAIL ROAD COMPANY, Debtor  
WM. WYER, Trustee

**STATEMENT OF CLAIM:** The Long Island Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road protest the awarding of position No. 666 to T. DeSimone and position No. 668 to J. R. Schultz, as advertised on Bulletin No. 161.

**EMPLOYEES' STATEMENT OF FACTS:** On March 30, 1948, Bulletin No. 161 was issued from the office of Supervisor Telegraph & Signal Department, G. H. White. Position No. 666 was bulletined as follows:

**Pos. No. 666**

Title of position	:	Asst. Foreman T & S
Headquarters	:	"Valley" Tower
Rate of pay	:	\$375.99 per month
Tour of duty	:	8 AM-5 PM—Meal Period—1 hour
Assigned territory	:	Sub-Div. 4
Regular day off duty	:	Sunday
Temporary	:	Vice G. E. Carrigan

No applications were received from employees in the Foreman's class for this position, but applications were received from the following employees:

Name	Roster number and date as Leading Signal- man	Roster number and date as Signal- man	Roster number and date as Assistant Signalman	Roster number and date as Helper
C. S. McGough	#16—1-31-44	#30—6-21-24	#38—6-21-24	#46—6-21-24
Herman Wulf		#32—7-20-24	#30—2-16-23	#32—7-23-21
T. F. Lavan	#14—5-18-29	#40—5-24-26	#49—5-24-26	#61—5-24-26
J. R. Schultz	#21—2-21-45	#41—5-28-26	#43—9- 1-25	#44—3-27-24
E. B. Hammond	#24—4-10-46	#65—5-16-29	#51—8-16-26	#55—7- 2-25
G. E. Carrigan		#20—8- 1-18	#22—6- 1-18	#24—5-17-17

General Manager on December 16, 1948 and thereafter apply the principles set forth therein as an agreed upon interpretation of the Rules and Working Conditions Agreement.

If additional proof is required to convince your Honorable Board that the instant claim is not supported by the applicable Rules and Working Conditions Agreement or the interpretations thereof, it is found in the fact that the Brotherhood's proposal of May 7, 1953, to revise the effective Rules and Working Conditions Agreement, included the proposal that Article 4, Section 18 be revised as follows:

"Promotion to positions classified herein will be based on ability and seniority. Ability being sufficient, seniority will prevail.

The term 'promotion' as used in this Agreement shall be understood to mean advancement of an employe from a lower seniority class to a higher seniority class which results in the establishment of a seniority date in a higher class."

It is at once evident that if the present Agreement as written or interpreted by the parties required that promotions "\* \* \* be based on ability and seniority \* \* \*" as the Brotherhood contends for herein, there would have been no necessity for proposing that Article 4, Section 18 be revised in the manner set forth above.

In view of the foregoing, it would be necessary for your Honorable Board, in order to sustain the claimants, to:

1. Disregard the fact that the instant claim is invalid because of not having been handled in accordance with the provisions of the Railway Labor Act, see Award 6229 (McMahon), also Award 4941 (Carter), this Division, and
2. Also disregard the well established and accepted principle that the functions of this Honorable Board are limited to the interpretation of existing Agreements and do not extend to the writing of new Agreements not heretofore agreed to by the parties.

In view of the facts presented and for the reasons stated, there is no basis for the instant claim and accordingly, it should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The within dispute will be determined upon its merits. The Carrier strenuously insists upon application of an implied time limitation for appeal based upon the fact that the claim was finally denied on December 16, 1948, and was not presented to this Board until May 15, 1953, approximately four and one-half years later. The Carrier relies upon Awards 4941 and 6229. The Organization seeks to distinguish said Awards by the fact that here, but not there, the Carrier was advised of the Organization's dissatisfaction with the determination and that it intended to prosecute the dispute to this Board. This difference would seem unimportant in light of the purposes of an appeal limitation and the avowed purposes of the Railway Labor Act. Nor is the problem of delay settled by the assertion that the Carrier could have prosecuted the claim to the Board during the interval. To do so would have made certain the then mere possibility of a serious dispute.

As the past Awards of this Division have pointed out, a limitation is not contained in the governing Congressional Act. Until the several Divisions of the National Railroad Adjustment Board, acting together, supply some cut-off period for appeals in the exercise of their authority to adopt proper rules to govern Board procedures (Sec. 3, First (u) ), it would appear to this Referee that he would be acting beyond his authority to arbitrarily suggest and apply a cut-off period, much as such action would seem desir-

able. At least past efforts on the part of Referees to do so have not been wholly successful as subsequent Awards would indicate. We will not renew the attempt. No rule of limitation is provided in the Agreement before us.

The Organization urges the application of Article 4, Section 20 (a), providing that an advertised position, in this case a temporary Assistant Foreman's position, shall be awarded to the senior qualified employee making application therefor in writing. As it turned out, no employee in the Foreman's class bid upon the position and while others, including Claimant Schultz, did, another, DeSimone, who had not made application, was appointed to fill the first and preferred of two vacancies. Schultz was appointed to the second position. The effect apparently was to give DeSimone seniority in the Foremen's class over Schultz although he held no seniority in the class immediately below, that of Leading Signalman.

It is Carrier's position that whenever a vacancy exists in the Foremen's class for which no bids are received and the vacancy cannot be filled by applying the provisions of Article 4, Section 20 (d), management is free, subject to Article 4, Section 18 (b), to fill the vacancy by appointing thereto an employee who, in its judgment, is qualified to assume the duties and responsibilities of the position in question. Further, that Article 4, Section 20 (a), relates to **application** for a job, which, it argues, is not synonymous with **bidding rights**; that paragraph (f) of Section 20, Article 4, is evidence of the fact that bidding rights are confined to those actually engaged in the class.

It should be stated that Article 4, Section 1, sets forth the groups of employees that shall each constitute a separate seniority class. Five separate groups are provided. Neither Claimant nor DeSimone held seniority in the Foreman or first group.

This Division, with a Referee assisting, was called upon to construe the several sections and paragraphs relied upon here in Award 4324. There we found a difference in intended meaning between the terms "bid" and "application," and ruled that only employees having seniority in the foremen's class were intended as qualified to bid. That Award points, as Carrier does here, to Section 20 (f) for evidence of that assumption. We find no compelling reason to disturb our prior ruling upon that point. Said Award, in effect, reads out of consideration here Article 4, Section 20 (a), upon which the Organization's contentions are based.

Section 18 (b), Article 4, provides:

"Employees covered by this Agreement who possess the necessary qualifications to plan, direct, lead, regulate and coordinate the work of other employees will be given consideration for promotion to positions in the foreman class. When two or more employees do possess the necessary qualifications (referred to in the preceding sentence of this paragraph) **the employee with the most service in the classes covered by this Agreement** shall be selected for promotion to the foreman class." (Emphasis supplied.)

While Claimant Schultz held a rating as Leading Signalman, the second group, and DeSimone did not, the record does show that the latter outranked the Claimant in the other three groups, holding earlier seniority dates and lower roster dates in each. The underlined words of the above-quoted paragraph, referring to classes in the plural, would seem to encompass DeSimone and not Schultz and justify the Carrier's selection of the former for the position in question. But if not applicable, the situation is not covered by the rules and Carrier was free to exercise its discretion in making appointment to the position.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 protest is without merit.

AWARD

Protest denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 16th day of July, 1954.