

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That the Carrier violated the spirit and intent of the Signalmen's Agreement when it declined to consider any of the four (4) applicants for signal maintainer's position at Shelby, Ohio, advertised in Bulletin S-35-51, and arbitrarily assigned B. W. Shannon to the position.

(b) That the senior applicant now be assigned to the position in accordance with applications received and given opportunity to qualify in accordance with promotion rules.

(c) That Mr. B. W. Shannon be reimbursed for all necessary additional expense to which he was put by reason of this assignment until correction is made.

EMPLOYEES' STATEMENT OF FACTS: Under date of October 5, 1951, Bulletin S-35-51 was issued by the Signal Supervisor advising that applications would be received up to 12 o'clock noon, October 15, 1951 for the temporary vacancy of signal maintainer with headquarters at Shelby, Ohio.

Applications were submitted by the following employees whose seniority and relative seniority rank numbers are as shown below:

Applicant	Seniority date as Asst. Signalman	Rank	Seniority date as Signal Helper	Rank
Ramsey, Fred			10-17-45	29
Wine, Thomas H.	6-23-50	29	9-18-46	32
Moore, Gail E.	3-18-51	31	10-12-46	34
Thomas, Earl B.	5-11-51	33	6-18-47	36

Bulletin S-38-51, dated October 22, 1951, advised "No qualified bids received" and that B. W. Shannon was assigned to the temporary vacancy.

Mr. Wine the senior assistant making application for this temporary vacancy, secured a leave of absence to return to Military service on October 13, 1951.

The Carrier asserts that the principle involving the issue of deciding who is "qualified" has already been passed on by this Division in a case decided on the property of this railroad.

The Carrier has reference to this Division's Award No. 3798, a dispute between the same parties to the present case.

There this Division with Referee James M. Douglas sitting with the majority held:

"The principle is well settled that the duty of deciding who is the qualified man is upon the Carrier in the first instance. After Carrier has selected such man, then the employes have the right to question Carrier's selection. But the burden of showing that such selection was unreasonable or unfair rests upon the employes, and they must support such a charge by proof. We might observe, however, that Carrier's right to select in the first instance the junior qualified man is subject to the restriction that Carrier must act reasonably, fairly, and in good faith without bias or prejudice. If it is shown that Carrier's decision is unreasonable or unfair employes would be entitled to relief.

"The record before us contains no affirmative proof of any kind that any man ranking below Snyder was in fact qualified for the position at Locust Street Tower so we must accept Carrier's decision that Snyder was the junior qualified man as proper and reasonable. See Awards 110, 237, 2031, 2058, 2491, 3151." The same finding was reiterated in Award No. 3799.

The Carrier asserts that its decision in the instant case was taken reasonably, fairly, in good faith, without prejudice or bias. For reasons already discussed at some length in this position the Carrier submits that the decision taken was taken only after due, proper and careful consideration.

The Carrier does not believe that the Committee has met the burden placed upon it to show that the selection was either unreasonable or unfair. The Committee has not because it cannot.

The Carrier submits that the claim here at parts (a), (b) and (c) is wholly without merit and respectfully requests this Division to deny it in all its parts.

OPINION OF BOARD: These claims arise on Carrier's refusal to accept any of four applicants to fill a temporary vacancy in the signal maintainer's position with headquarters at Shelby, Ohio.

In brief, it is the contention that Carrier's assigning officer used arbitrary and capricious motives in filling this vacancy and that under (e) of this claim, Claimant Shannon, not an applicant for the position, was required to leave his position at Summit, Ohio and accept the position many miles distant with the result that he incurred away-from-home expenses amounting to \$883.07, and in support of his claim Award 2535 is cited which award involved these same parties.

Respondent Carrier states its position that on the basis of experience none of the four applicants were qualified. That a signal maintainer is on his own to protect his territory to meet any and all emergencies. That a signalman works in a gang under qualified men who are instantly available for assistance and more responsibility is necessary on the position under consideration. Also that under a special rule of the Agreement, Rule 47 (a) if sub-sections 1, 2, 3 and 4 fail to produce sufficient qualified maintainers, 47 (a) 5 becomes automatically applicable and is controlling in a situation as here presented. That Awards 3798 and 3799 pass on this same proposition on this property.

In arriving at a solution of this controversy the question entitled to consideration is the qualifications of the four applicants for the position. It is contended carrier's assigning officer made the statement some two or three weeks prior to filling the vacancy that Shannon would be assigned to the position at Shelby. This contention is denied by Carrier by stating that the position had not been bulletined and therefore no one had as yet applied for the position and that it would be impossible to anticipate a situation as later developed as the Signal Supervisor would have had no direct or immediate knowledge on which to make such a statement. This would seem to be a logical answer to such an allegation.

The record shows that of the four applicants, Moore and Thomas had performed no service as maintainers prior to the time this position was bulletined, but each had some experience as an assistant; Ramsey had six years experience as a helper, none as an assistant, but had worked for short periods, (33 days) as an acting maintainer or acting signalman, but had no experience on semaphore type signals. Wine had worked a total of 44 days as acting maintainer or signalman, 29 days as acting maintainer. Shannon without question by his record was qualified.

There are some conflicts in the record as to the qualifications of the four applicants, however, in the main it cannot be said that it has been established that Carrier's acts here were of a nature of being arbitrary, capricious or unreasonable. It has been contended that of the four there should have been among them someone who was entitled to the right to qualify. We do not view this situation as imposing a duty on Carrier to place an applicant on a long territory such as here existed for qualification where there was a qualified employe who could be used as provided in Rule 47 (a) 5. Therefore, it is considered that claims (a) and (b) should be denied.

On claim (c) we consider that Rule 19, "Employees held away from home station," that claimant's home station under the bulletin rule was Shelby, Ohio. We do not construe the provisions of Rule 19 to have the broad application as contended herein by Petitioners and do not believe that it applies here.

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 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 for the Adjustment Board has jurisdiction over the dispute involved herein; and

There was no violation of the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1955.