

Award No. 7070
Docket No. SG-7073

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad:

(a) Protest assigning junior T. & S. Helpers to positions in the Signalmen's Class in preference to senior helpers, reference is made to Bulletin No. 116 dated September 23, 1949, and Bulletin No. 117, dated December 13, 1949.

(b) Claim that T. & S. Helpers P. F. Chamberlin and E. P. Harry, who are the senior men, should have been given preference and assigned to the higher rated positions. We further claim that P. F. Chamberlin and E. P. Harry should receive a similar assignment by Bulletin showing the same effective date.

(c) Claim that P. F. Chamberlin and E. P. Harry should be paid the current rate of pay for signalmen, for all time worked since November 23, 1949, and until such time as they receive a position in the Signalmen's Class.

EMPLOYEES' STATEMENT OF FACTS: Under date of November 23, 1949, Bulletin No. 116 (Brotherhood's Exhibit "A") was issued by the Cleveland office of Supervisor T. & S., G. L. Black. Insofar as Bulletin No. 116 relates to this case, it called for bids on five new permanent positions of Signalmen on the Lake Division. The bulletin stipulated that application for the positions should be filed with the Supervisor, T. & S.

Under date of December 13, 1949, Bulletin No. 117 was issued by the same office (Brotherhood's Exhibit "B"). Bulletin No. 117, among other things not relevant here, assigned five Helpers to the Signalmen positions, all of whom were junior to the claimants P. F. Chamberlin and E. P. Harry, except M. B. Janasko, who was senior to Harry.

The seven Helpers who made application for the five vacancies had established seniority in the Helper's class in the following order:

P. F. Chamberlin	12-20-47
M. B. Janasko	2-11-48
E. P. Harry	6-01-48
R. E. Long	6-04-48
E. W. Abicht	6-08-48
J. A. Lawrence	6-14-48
T. E. Sablotny	12-20-48

All data contained herein have been presented to the employees involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier found it necessary to augment its force in the Telegraph and Signal Department at Akron, Ohio, while installing a new passenger station. Accordingly, on November 23, 1949, by Bulletin No. 116, five new signalman positions were advertised. There were no employees in the signalmen's class who were either furloughed or reduced. When Bulletin No. 116 expired November 30, 1949, the following seven employees who held seniority as helpers had made application for those positions:

P. F. Chamberlin	5-13-47
M. B. Janasko	2-11-48
E. P. Harry	6- 1-48
R. E. Long	6- 4-48
E. W. Abicht	6- 8-48
J. A. Lawrence	6-14-48
T. E. Sablotny	12-20-48

After examining the qualifications of the seven employees (Carrier's Exhibit "E"), assignment to the five positions were made to employees Janasko, Long, Abicht, Lawrence and Sablotny (Bulletin No. 117, December 13, 1949). On December 24, 1949, protest was filed by the Local Chairman on behalf of Employees Chamberlin and Harry, claiming that as senior T&S helpers, they should have been given preference for these positions. After conferences on the property, Carrier denied the claim on the ground that these two employees were not qualified to fill signalmen positions.

The pertinent language of the parties' Agreement may be found in Article 4. Section 18 (a) of this article provides that:

"Assignments to positions in the leading maintainer, leading signalman, signal maintainer, T. & S. maintainer, telegraph and telephone maintainer, signalman, assistant signalman or helper classes shall be based on ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern." (Emphasis supplied.)

The record indicates that Carrier examined the qualifications of the seven applicants (Exhibit "E"). Each was considered in terms of his ability to perform the eight work items required of those filling the position. Claimant Harry was found to have shown no interest in applying himself to learn the work in five of the eight categories. Two of the items he had not had an opportunity to learn. And on the remaining item he had limited qualification. Claimant Chamberlin, who had the longest seniority, had not had an opportunity to learn six of the eight work items. (This may have been due to his having been on leave during part of his two and one-half years in the Carrier's service.) Also, the Carrier considered Claimant Chamberlin "not qualified" to perform the other two work items on the list.

Against this, the five who were assigned were found to have been fully qualified in certain areas of the work, and to have limited qualifications in other areas. Thus, this record, which has not been refuted, indicates that Carrier chose the five employees to fill the vacancies in question on the basis of their ability and fitness. So long as the decision was made on such a basis, the Carrier was well within the rule.

There is no proof in the record that this decision was made on any arbitrary, capricious or unfair basis. The rule does not provide that seniority shall come first in considering such appointments. Seniority prevails where fitness and ability are sufficient. There is no proof in the record that Claimants Chamberlin and Harry were sufficiently qualified, at the time this claim arose,

to adequately perform the work required in the signalman positions. For this reason, their claim must be denied.

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 Employee involved in this dispute are respectively carrier and employee 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 decision of the Carrier was not arbitrary, or unreasonable, but was based upon reasonable findings and was in accord with the provisions of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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