

Award No. 7171
Docket No. SG-7256

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America that:

(a) The Carrier violated the provisions of Article 3, Section 1, paragraphs (a) 2 and (b), of the Signalmen's Agreement when it awarded positions of Signalmen to T. C. Daugherty and C. W. Muir bulletined on Bulletin No. 37, dated September 28, 1950, instead of awarding these positions to James Olear and D. P. Murphy.

(b) James Olear and D. P. Murphy be paid at the Signalmen's rate of pay from October 20, 1950, when the award was made, until this claim is settled, and be shown on the seniority roster as having seniority from October 20, 1950 as Signalmen.

EMPLOYEES' STATEMENT OF FACTS: In Advertisement Bulletin No. 37, dated September 28, 1950, there were included two positions as Signalmen for Pittsburgh-16th Street.

Applications for these positions were made by the following employees, who did not hold seniority in the Signalman Class:

| Name of Applicant | Seniority Date as T. & S. Helper | Seniority Date as Asst. Signalman |
|-------------------|-------------------------------------|--------------------------------------|
| J. S. Olear | 2- 8-49 | 2-21-49 |
| D. P. Murphy | 2- 9-49 | 6- 1-49 |
| C. W. Muir | 3- 1-49 | 9-20-49 |
| T. C. Daugherty | 9-18-50 | — |

The two positions of Signalman in question were awarded to C. W. Muir and T. C. Daugherty in Award Bulletin No. 37, dated October 10, 1950, their assignments thereto to be effective October 20, 1950.

Both James Olear and D. P. Murphy submitted bids for the positions involved but received no consideration from the Carrier.

J. S. Olear was subsequently awarded a position as Signalman effective February 21, 1951, and D. P. Murphy was similarly assigned effective May 17, 1951.

tion of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that its refusal to assign and award the disputed positions to Claimants on the basis that they were not qualified was in accordance with the provisions of the applicable Agreement and that the Claimants are not entitled to the compensation which they claim; further, that the claims in this case were not handled by the Employees in accordance with the spirit and intent of the Railway Labor Act, as amended, by reason of the unreasonable delay in progressing such claims to your Honorable Board.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

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

(Exhibits not reproduced.)

OPINION OF BOARD: In connection with its Pittsburgh Terminal Improvement Project, Carrier bulletined a number of Signalman positions. For two of these positions, no bids were received from employees holding seniority as Signalmen, but bids were received from three assistant Signalmen and one helper, as follows:

| Name | Seniority— T & S Helper | Seniority Assistant Signalman |
|-----------|----------------------------|----------------------------------|
| Olear | 2- 8-49 | 2-21-49 |
| Murphy | 2- 9-49 | 3- 1-49 |
| Muir | 3- 1-49 | 9-20-49 |
| Daugherty | 9-18-50 | — |

The positions were awarded to Daugherty and Muir. Olear and Murphy claim that under the Agreement rules, they were entitled to the positions. The rules involved are as follows:

"ARTICLE 3—ASSISTANT SIGNALMEN

Section 1

(a) (Effective September 1, 1949) The number of assistant signalmen on a seniority district shall be consistent with the requirements of the service and the apparatus to be installed and maintained. Employees assigned to positions of assistant signalmen shall be promoted from signal helpers, when available; ability to learn the work being sufficient, seniority will govern. A helper with six or more months' service as helper, who is promoted to assistant signalman, will be considered as having 130 days of basic training as assistant signalman in determining his rate as assistant signal-

man. A helper with less than six months' service as helper, who is promoted to assistant signalman, shall be given credit as assistant signalman for the time he was employed as helper in determining his rate as assistant signalman. The period of training for an assistant signalman to qualify as mechanic shall be eight basic training periods of 130 eight-hour days of service each, overtime excluded, except that:

(1) An assistant signalman failing to show sufficient aptitude to learn the work within a period of 65 eight-hour days of service, overtime excluded, will be returned to the position of signal helper, retaining his seniority rights as such, or—

(2) An assistant signalman may be promoted to a position of mechanic before the expiration of the eight basic training periods of 130 days each, referred to above, if such a position is available and if, in the opinion of Management, he is qualified therefor. An Assistant signalman so promoted who fails to meet the requirements of the position shall be returned to the assistant signalman class to complete his basic training.

(b) It is the intent of this Section that employes will receive their training on this Railroad and will be promoted to mechanic rather than employing new men for such positions."

"ARTICLE 4—SENIORITY AND ASSIGNMENT TO POSITIONS

Section 18

(a) 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."

"ARTICLE 8—MISCELLANEOUS

Section 4

(a) An employe will not be required to take a written examination to qualify for a position. However, in the event of a reasonable doubt as to his qualifications, he may be required to demonstrate his ability by a reasonable and practical test."

Claimants contend that seniority should have governed the assignments unless the senior employes did not possess sufficient ability and fitness; that the record shows that Claimants possessed sufficient ability and fitness; and that in any event, if Carrier doubted that Claimants were sufficiently qualified for the positions, it was required under Article 8, Section 4(a), to give them the opportunity to demonstrate their ability by a reasonable and practical test. No test was given and therefore Carrier violated the Agreement in not assigning the positions to Claimants, the senior employes.

Carrier maintains that under Article 3, since none of the applicants had completed the required eight basic training periods, none was entitled to promotion; that the rule merely permitted Carrier to promote them if in its opinion they were qualified; that under Article 4, Section 18(a), seniority is not controlling unless Carrier first determines that the applicant is qualified; and that Article 8, Section 4(a) does not require a test in determining ability, but merely permits Carrier to give such a test. The appropriate supervisors considered the qualifications of the four applicants and decided that Claimants were not qualified and the other two were; and the assignments were properly made to the qualified employes.

In considering the cited rules in their relationship to one another, it appears that the plan of progression for Signalmen is that they start as helpers, move on to assistant Signalman and then to Signalman. No specific time period is established for service as helper; helpers are promoted to assistant Signalman as such positions become available, "ability to learn the work being sufficient, seniority will govern." In order to qualify as mechanic (Signalman) an assistant Signalman must serve eight training periods of 130 working days each. At that time he becomes entitled to promotion to mechanic, when such position is available. Prior to the expiration of the prescribed training period, an assistant Signalman may be promoted to mechanic. There is no requirement that he be so promoted, even though a mechanic position is available. The rule is permissive only—it permits the Carrier to promote the assistant Signalman prematurely, if, "in the opinion of Management," he is qualified for the promotion. It is clear that under Article 3, neither of the Claimants had a right to the position for which he applied.

Although Article 3 is the rule specifically concerned with assistant Signalmen, the class to which Claimants belonged, Article 4, Section 18(a), a rule dealing with qualifications for assignment, also applies to assistant Signalmen. It is the standard rule that assignments to positions shall be based on ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern. It would appear, in order to give any significance to Article 3, that Article 4(18)(a) applies to the assignment of assistant Signalmen to signalman positions after they have qualified rather than before. Otherwise, there seems no point in providing a specific rule in the Agreement concerning the promotion of assistant Signalmen who have not completed their training.

In any case, even if Article 4(18)(a) does apply to Claimants and seniority is a factor, it does not become the governing factor unless ability and fitness are sufficient. No specific requirements are set forth in the Agreement which Management must meet in determining whether an assistant Signalman is "qualified" under Article 3(1)(a)(2), or in determining his "ability and fitness" under Article 4(18) (a). The contention that Article 8(4)(a) requires that a practical test be given in reaching these determinations cannot be sustained. That rule is clearly permissive—it allows Carrier to give such tests, but there is no compulsory language in the rule.

Although the Agreement does not limit Carrier to any specific method of forming its opinion, this Division has held in many awards that Carrier, in determining the qualifications of employees for positions, may not act in an arbitrary, capricious or discriminatory manner, but must exercise its judgment in good faith. The question then is whether in this case, Carrier made its decision based on a good faith consideration of the ability of the four applicants, or denied the appointments to Claimants without such consideration or out of bias.

Carrier asserts in the record that the individual qualifications of the four men were considered by their superiors; that Muir had shown that "he was able to comprehend instruction very quickly and could promptly solve both mechanical and electrical problems." Daugherty "had formerly been employed by the Union Switch and Signal Company . . . where he had had valuable experience in the field of construction organization, the same type of work as was involved in the construction of the Pittsburgh Terminal Improvement Project. . . . He was especially well qualified in the electrical phases of a Signalman's work, an attribute which was essential in the construction work to be done."

As to Claimants, their superiors decided that neither had sufficient experience in performing work of the required nature under the circumstances of these assignments.

There is no evidence that Carrier was biased against either of the Claimants. Neither is there evidence of an affirmative nature as to Claimants'

ability to do the work involved which would justify our substituting our judgment for that of the Carrier in this regard. The record contains substantial evidence that Carrier did give consideration to the qualifications of all four applicants, and that it formed its opinion and based its decision on their past experience and observed ability at their work. This being so, there was no violation of the rule.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1955.