

Award No. 8120  
Docket No. SG-8159

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

*Norris C. Bakke, Referee*

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Chicago, Burlington and Quincy Railroad that:

(a) The Carrier violated the Signalmen's Agreement when it assigned Signal Maintainer F. E. Mullnix to a temporary vacancy in a Signal Inspector's position.

(b) W. H. Penney, Jr. be paid at the Inspector's rate of pay starting October 27, 1954, and continuing for the period that he was held off the Inspector's position. (Carrier's file S-38-55.)

**EMPLOYEES' STATEMENT OF FACTS:** Under date of October 1, 1954, a temporary vacancy in a Signal Inspector's position with headquarters in outfit cars, regular days off duty, Saturday, Sunday and holidays, and a salary of \$441.17 per month was bulletined for seniority choice as provided in the Signalmen's Agreement.

This temporary vacancy was awarded to Signal Maintainer F. E. Mullnix located at St. Joseph, Mo., by Chief Signal Engineer A. L. Essman under date of October 27, 1954.

General Chairman J. D. Richards did not receive a copy of Mullnix's application for this temporary vacancy.

Applications for this temporary vacancy were sent to Chief Signal Engineer Essman, as evidenced by copies of their applications as received by General Chairman Richards, from the following employees:

|                   |                |
|-------------------|----------------|
| W. W. Lauer       | dated 10-04-54 |
| L. L. Kesler      | " 10-05-54     |
| D. C. Moppin      | " 10-05-54     |
| W. H. Penney, Jr. | " 10-06-54     |
| J. M. Neff        | " 10-07-54     |
| C. R. Adkison     | " 10-07-54     |
| E. M. Feran       | " 10-08-54     |

the Carrier has the obligation of sending copies of bulletins to those employees entitled to consideration, and those employees who are entitled to consideration have the obligation, if they desire the position, of sending their bid to the Carrier and also of sending a copy of their bid to the General Chairman. However, the only employees who are entitled to consideration from a seniority standpoint under Rules 37 and 55, are those who hold seniority in the class in which the vacancy exists. In this case the vacancy bulletined was in the Inspector Class. Any employee holding seniority in the inspector class had a right to bid for the vacancy, and coupled with that right is the obligation to furnish copy of the bid to the General Chairman. On the other hand, employees not holding seniority in the inspector class do not have a right to bid for positions in that class until they have established seniority in that class, and are not "entitled to consideration" as that phrase is used in Rule 55. Their rights stem only from Rule 50, the promotion rule, under which they may apply for promotion to a higher class. Not having the right to bid, and not being entitled to consideration as that phrase is used in Rule 55, they naturally have no obligation under Rule 55 to furnish the General Chairman a copy of their application for promotion. Rights and obligations go together, and where there is no right as here, there can be no obligation. See Awards 4324 and 6721.

In the instant case, neither Penney nor Mullnix had any right under Rule 55 to the position in question since neither of them held seniority in the inspector class. Having no right to bid, there was no obligation on either's part to furnish a copy of their application for promotion to the General Chairman. The promotion of Mullnix, as stated previously, was made in conformity with the provisions of Rule 50, which is the only rule in the agreement providing the manner in which an employee will move from a lower class to a higher class in which he has not previously established seniority. Rule 55, therefore, is not pertinent to the issue here involved.

In summary, it is the Carrier's contention that:

(1) The appointment of Mullnix to the Signal Inspector position was in conformity with the practice agreed upon in the agreement dated October 18, 1950.

(2) The promotion of Mullnix, who is senior to claimant, from a lower class to a higher class was in conformity with the provisions of Rule 37 and 50.

With these irrefutable facts before, the Board must deny the claim in its entirety.

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All data herewith and herein submitted has previously been submitted to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Employees state "The issue involved in this case is that the General Chairman did not receive a copy of Mullnix's application as provided in Rule 55(a)."

Rule 55(a) is as follows:

"Assignments to new positions, or vacancies, will be made after bulletin notice has been posted for a period of ten (10) days and sent to all employees entitled to consideration in filling the position and to General Chairman, during which time the employees may file their applications with the official whose name appears on the bulletin, with copy to General Chairman. Appointment will be made and the name of the successful applicant announced within (10) days after

the closing of the bulletin. Copy of all assignments shall be furnished the General Chairman." (Emphasis supplied.)

Carrier says this rule is not applicable because claimant was not an employee "entitled to consideration" within the meaning of the rule in that he did not have seniority in the class in which the vacancy existed.

However, on November 25, 1952 Carrier's Chief Signal Engineer A. L. Essman wrote the following letter:

"Letter of understanding regarding making assignments of Bulletins:

November 25, 1952

Mr. J. D. Richards  
General Chairman, B.R.S. of A.  
2003 F. Street  
Lincoln 8, Nebraska

Dear Sir:

With reference to yours of November 5th, wherein you advise that you have made some research on other roads regarding the handling of bulletins, and have advised of a method which you have asked that we place in effect, this method being that when a position is advertised by bulletin, that the bulletin be furnished to all employees on a seniority district, regardless of class, and that all would have the right to bid on such bulletin. In making assignment, men holding seniority in the class of the position being bulletined would be considered, and in the event that there were no bids received from that class, then the senior man entering a bid from the next lower class would be considered for the position. If he qualifies, he would then be assigned to the position, and by the absence of a bid, it will be indicated that the man in the next lower class is willing to be passed by.

I am agreeable to the issuance of bulletins with that understanding, and I assume that you will apprise your membership of the basis on which these will be issued in the future.

Yours truly,

/s/ A. L. Essman  
Chief Signal Engineer"

(Emphasis supplied.)

This letter placed claimant in the class entitled to consideration under Rule 55(a).

Carrier says that Essman had no authority to write such a letter and says that Chairman Richards of the employees' organization agreed that Essman had no such authority, quoting the last paragraph of Richards' letter to J. E. Wolfe, Assistant to the Vice President of the Carrier but the most that can be said of the quoted paragraph is that Richards was in doubt about Essman's authority.

We think that under the circumstances here and under Rule 76(b) the Carrier is estopped from denying Essman's authority, and consequently Rule 55 is applicable, and since it is admitted that Mullnix did not send a copy to the Chairman this claim must be sustained. Awards 4884 and 2276.

**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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1957.