

Award No. 10584

Docket No. SG-10052

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Eugene Russell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE NEW YORK CENTRAL RAILROAD (WESTERN DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee:

(a) That Mr. D. L. Schultz, presently employed as Signal Maintenance Foreman at Cleveland Union Terminal, Cleveland, Ohio, be paid the differential in rate of pay between that of Signal Construction Foreman and that of Relay Inspector commencing from August 20, 1956, until such time as he is placed on the position of Relay Inspector, per Bulletin No. 16, under date of July 18, 1956.

That Mr. C. J. Sands, present incumbent, now filling the position as Relay Inspector, per assignment bulletin under date of August 20, 1956, be made whole for any loss, monetary or otherwise, that he may have incurred, pending final decision in the matter.

JOINT STATEMENT OF FACTS: Under date of July 18, 1956, position of Relay Inspector was bulletined and assigned in accordance with provisions of the May 16, 1953 Inspector-Foreman Agreement between the New York Central System and the Brotherhood of Railroad Signalmen of America. Bulletin No. 16, advertising the position, read as follows:

"Bids will be accepted in the office of the Signal Engineer, Cleveland, Ohio, until 12:00 Noon, July 28, 1956, for the following position:

Title	— Relay Inspector
Headquarters	— Cleveland, Ohio
Monthly Rate	— \$489.16
Territory	— Cleveland Signal District

This is a permanent position vacant due to the promotion of the present incumbent.

This position comes under the terms of the Inspectors' and Foremen's Agreement, effective March 16, 1953, and will be awarded in accordance with same.

The last paragraph of the Opinion of the Board is quoted below with a portion thereof underscored for emphasis:

"The service record of the claimant is set forth in the Employees' submission; letters are set forth, stating what other employees think of the claimant's fitness and ability to handle the bid-in position. **But under the rule, the head of the department shall be the judge, with the right of appeal.** Appeals were taken by the claimant and they were denied. The papers asked of the Carrier were furnished the claimant on which to base his appeals. The claimant has the burden to show this Board that he did possess the fitness and ability to perform the work of this position. This he has failed to do. **And he has also failed to prove that fairness and good faith have been violated or that a decision on fitness and ability has been fraudulently, capriciously or unreasonably made by the Carrier.** Award 2031. No such showing has been made in this record." (Emphasis ours.)

CONCLUSION:

Carrier would here again emphasize the fact that Rules 6 and 10 of the Inspector-Foreman Agreement, which the Carrier submits are controlling in the instant dispute, specifically provide that the successful applicant shall be determined by the judgment of management.

It is, therefore, readily apparent that when, as is the case in this claim of D. L. Schultz, the rules provide without equivocation that management shall be the judge in selecting the successful applicant when two or more employees submit bids for the same bulletined position, assignment of C. J. Sands to the bulletined position as Relay Inspector was and is not violative of any Agreement Rule, nor does it contravene the seniority rights of any employee or employees.

It must be concluded that the Organization is requesting by means of a sustaining award the modification of its agreement, a function not within the authority of your Board.

For reasons hereinbefore set forth, the Carrier submits that the instant claim is not supported by existing rules and should be declined.

All evidence and data set forth in this dispute have been considered by the parties in conference.

OPINION OF BOARD: This claim is a joint submission and the facts are not in dispute. Under date of July 18, 1956, position of Relay Inspector was bulletined and assigned in accordance with provisions of the May 16, 1953 Inspector-Foreman Agreement between the New York Central System and the Brotherhood of Railroad Signalmen of America. Bulletin No. 16, advertised the position. The position of Relay Inspector was awarded to Mr. C. J. Sands.

Mr. C. J. Sands had a seniority dating of April 15, 1918 on roster identified as Cleveland Signal Division Roster and prior to September 1, 1956 did not have seniority on the Inspector-Foreman Roster of the Western Signal District.

Signal Maintenance Foreman D. L. Schultz had seniority dating of February 1, 1952, on the Western Signal District Inspector-Foreman Roster, and seniority dating of March 27, 1917 on the Cleveland Signal Division Roster.

Signal Maintenance Foreman D. L. Schultz claimed that he should have been assigned to the Relay Inspector position instead of Mr. Sands. The claim has been duly progress on the property and denied.

The claim rests upon Rules 6 (b) and 10 of the Agreement.

"RULE 6 — ADVERTISING AND BIDDING

"(b) Where no bids are received for a position or vacancy, or where in the judgment of the management no bidder is qualified to perform the duties involved, appointment may be made without regard to these rules."

"RULE 10 — QUALIFICATIONS

"The exercise of seniority under Rules 6 and 7 of this agreement is contingent upon the employes who seek to exercise such rights *having fitness and ability, in the judgment of the management, for the position sought.* If at any time an employe does not satisfactorily fulfill the duties of the position to which assigned, he will be permitted displacement rights to such position for which he may be qualified; *the management to be the judge in both instances.*"

It is the position of the employes that Rule 10 contemplates that the senior applicant for a position will be given an opportunity to demonstrate his ability by being assigned to the advertised position, and that management would have the right of redress in the event of unsatisfactory performance.

The position of the employes and the Organization in this case is unsound and cannot be sustained.

Where the parties have specified "fitness and ability, in the judgment of the management", where matters of ability, merit and fitness are considered, this Board is bound by that language. Only upon a showing of gross abuse of discretion should we overrule Management's decision in these matters. In this record there appears no evidence of arbitrary or capricious action on the part of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 3rd day of May 1962.