

Award No. 11006

Docket No. SG-10613

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement (particularly Sections 32, 33, 36, 63, 66, 67, 69, and others) when it failed and refused to award the Signalman's position advertised by Bulletin No. 155 and the Signal Maintainer's position advertised by Bulletin No. 355 to Assistant Signalman W. N. Travis, who was the senior bidder for the positions, and instead arbitrarily awarded the positions to a junior Assistant Signalman (J. H. Johnson).

(b) The Carrier now compensate claimant W. N. Travis the difference in rate of pay he received and that which he would have received had he been properly awarded the positions advertised by Bulletins No. 155 and 355 for the number of hours equivalent to that paid J. H. Johnson, who was improperly awarded the positions. [Carrier's File: 135-192-37 Spl. — Case No. 8 Sig.; 135-322-45 — Case No. 7 Sig.]

EMPLOYES' STATEMENT OF FACTS: Signal employees of this Carrier's Louisiana and Vicksburg Divisions and the New Orleans Terminal are on one seniority roster and hold seniority and rights over the entire Divisions and Terminal. The Carrier has two Signal Supervisors assigned to this particular seniority district, one of which is headquartered at New Orleans, Louisiana, and one with headquarters at Jackson, Mississippi. Signal employees on this seniority district are permitted to hold seniority and rights under two Signal Supervisors by Memorandum of Agreement between the parties.

The signal employees are under the jurisdiction of only the Signal Supervisor on his assigned territorial jurisdiction. When a new position is bulletined or a vacancy is bulletined, all of the signal employees of the seniority district are given copies of the bulletin and permitted to bid for the position if they so desire. Likewise, when employees' positions are abolished or they are displaced by someone their senior, due to that employee's position having been abolished, etc., such displaced or affected employee is permitted to exercise displacement over the entire seniority district in accordance with the provisions of the current agreement.

3. Summary

The Carrier has shown that the portion of this claim resulting from Assistant Signelman Johnson's promotion to the Signal Maintainer's position (Bulletin 355) should be dismissed because of the Organization's failure to present and handle this portion of the instant dispute in accordance with the provisions of the August 21, 1954 Agreement.

The Carrier has also shown that what it did here was in full conformity with the provisions of the Signalmen's Agreement, and in line with the many Awards of this Board.

The Board is requested to deny this Claim.

All data contained herein have been discussed or made known to the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. The Carrier by Bulletin No. 155 advertised a temporary position of signelman. Those making bids for the position were all assistant signalmen who had not completed 8 periods of 130 eight hour days of service as such. The position was awarded to an Employee junior to the Claimant. The Carrier said he was "The oldest bidder, shown to be most qualified". This temporary position was abolished on January 25, 1955. A permanent position of Signal Maintainer was advertised January 24, 1955, Bulletin No. 355 and was awarded to an Employee "who was the oldest qualified bidder, but junior to the Claimant.

The Statement of Claim asserts a violation of the Agreement because the Claimant, who was the senior bidder, was not awarded the positions advertised in the bulletins. The fact that the applicants for the positions were assistant signalmen -- with less than 4 years (8 periods of 130 eight hour days) of service, the controlling provision of the Agreement is Article 3, Section 33(b). The paragraph provides the conditions requisite to promotion when 4 years of apprenticeship have not been completed. Such Employees shall be promoted "in the order of their seniority . . . if a position is open and they have qualified . . .".

This rule does not establish any degrees of qualification. If more than one of the applicants for promotion are qualified the senior Employee "shall" be promoted even though a junior Employee may be considered better qualified or "most qualified". In this case the Carrier exceeded the requirements of this Section [33(b)] when it awarded the position under Bulletin 155 to the senior "most qualified" Employee. If others were qualified and senior to Johnson, it should have been awarded to the senior Employee, if qualified, but not necessarily as well qualified.

The problem before the Division is whether the Claimant, who is admittedly senior to the successful bidder, was qualified at the time the positions were filled pursuant to the bulletins.

The rule leaves to the Carrier the duty of determining who is qualified. Implicit in the rule is the requirement that the Carrier must be fair and reasonable to all Employees concerned. This Division has no means of determining in fact the qualifications of an individual Employee

and we should be very reluctant to substitute our judgment as to an Employee's qualifications for that of the Carrier. We can determine, however, if there has been a breach of the rule because the Carrier in forming its judgment acted unfairly or unreasonably.

Before awarding the position under Bulletin 155 the supervisor interviewed each applicant and reviewed their employment record. [We will ignore the tests as they came after the initial judgment was made.] From this information the Carrier made the initial evaluation of the qualifications or lack thereof of the applicants, and determined that two of the applicants were qualified. On the other hand there is nothing in the record to show affirmatively that the Claimant was qualified. This should be established before we can find the Carrier acted unfairly. Rather than showing that he was qualified, the Claimant contends that by reason of the 30 day provision in the rule he should have been promoted on account of his seniority and given 30 days to establish his qualifications for the position. This contention ignores the requirement of the first sentence in paragraph 33(b) that the applicants "have qualified". Further, we do not find that the second sentence of the rule is for the purpose as contended by applicant. We believe the 30 day provision is to allow an Employee who has been deemed qualified to demonstrate his capacity to perform signalman or signal maintainer work.

Based on this understanding of the pertinent rule and the facts of record we have concluded that the Claimant has not established that the Carrier was unfair when it concluded at the time the bulletin jobs were awarded that Claimant was qualified.

A considerable part of the submission has dealt with what amounts to a protest to the manner of giving examinations and the way in which the Carrier has handled the training of its apprentices. This was not made a part of the initial claim nor is it encompassed in the Statement of Claim filed with the Division. We can not, therefore, make any findings with respect to such protest.

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 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1962.