

Award No. 11121
Docket No. SG-10614

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rules 47 and 49, when it made the following assignment:

Awarding of Position #2346, Bulletin #509 to D. J. Lunsman, award made on Bulletin #510 dated April 18, 1957.

Claim is made in view of the fact that employes senior to D. J. Lunsman made application for the position cited above.

(b) The Carrier now pay the senior employe who made application for the position cited in part (a), the difference between his respective earnings and the earnings of D. J. Lunsman, overtime included, subsequent to April 28, 1957. [Carrier's Case SG-1-57]

EMPLOYEES' STATEMENT OF FACTS: On April 10, 1957, Bulletin No. 509 was issued, advertising Position No. 2346, Assistant Foreman with headquarters at T & S Gang #1, Jamaica.

Bulletin No. 509 is reproduced and attached hereto, and is identified as Brotherhood's Exhibit No. 1.

On April 18, 1957, Bulletin No. 510 was issued, awarding Position No. 2346, Assistant Foreman, to Mr. D. J. Lunsman.

Bulletin No. 510 is reproduced and attached hereto, and is identified as Brotherhood's Exhibit No. 2.

Inasmuch as employes senior to Mr. D. J. Lunsman made application for Assistant Foreman, Position No. 2346, and did not receive any consideration by the Carrier for the position, a claim was filed by General Chairman S. A. Yallowley with Mr. Christ Meyers, Assistant Chief Engineer, under date of April 23, 1957, as follows:

that he has fitness and ability to occupy a position, and this has not been done.

7—There is no proof in the record that the decision of the Carrier was made on any arbitrary, capricious or unfair basis.

Since in the instant case, the qualified senior applicant was awarded Position No. 2346, Assistant Foreman, T. & S. Gang No. 1, the claim as made herein should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. A permanent vacancy existed in Position No. 2346, Assistant Foreman, T. & S. Gang No. 1, Jamaica. This was advertised for bids in Bulletin No. 509 dated April 10, 1957 with a closing date for applications up to 12 o'clock noon on April 17, 1957. The following made application:

Class	Rank No.	Name
Leading Signalman	19	C. J. Ginfride
Leading Signalman	21	Russell Crevoiserat
Signalman	39	C. L. Wrage
"	41	Frank J. Mashek, Jr.
"	49	T. L. McMillan
"	63	Daniel J. Lunsman
"	67	Fred C. Naber
"	71	Emil W. Tudek
"	72	Gustave G. Wade
"	74	J. N. Luquer
"	97	J. F. Carpin

Carrier awarded the Position to D. J. Lunsman on April 18, 1957.

On April 23, 1957 Employees' General Chairman wrote to Carrier's Assistant Chief Engineer as follows:

"Please consider this a protest on behalf of all employees senior to D. J. Lunsman who made application for Position #2346, Bulletin #509 dated April 10, 1957. This position was awarded to D. J. Lunsman on Bulletin #510 dated April 18, 1957.

This is also a claim on behalf of the senior employe for the difference in earnings, overtime included, between the senior employe and D. J. Lunsman subsequent to April 28, 1957.

The reason for this protest and claim is that the Carrier violated Rule 47 and Rule 49-D-3 of the current Agreement."

In its ex parte submission, Employees named F. J. Mashek as the Claimant. Carrier contends that inasmuch as the Statement of Claim is on behalf of

"the senior employe who made application for the position," C. J. Ginfrida and not F. J. Mashek was the senior employe. Carrier, therefore, is not obliged to "rebut anything not covered in the Statement of Claim." The Statement of Claim also states that: "Claim is made in view of the fact that employes senior to D. J. Lunsman made application for the position cited above." (Emphasis ours.) Furthermore, Employes' letter of April 23, 1957 says that the protest is "on behalf of all employes senior to D. J. Lunsman . . ." (Emphasis ours).

Carrier is now and was at all times aware that the claim is in behalf of any employe senior to D. J. Lunsman who made application for the position and who claims to have the necessary qualifications for the work required. Mashek made application, he has greater seniority than Lunsman and he contends that he is qualified for the position. Award 10537 (Sheridan) cited by Carrier Member is not pertinent to the facts here.

The principal issue is whether Mashek has the qualifications and whether he should have been awarded the position instead of Lunsman. We are obliged to consider this issue for determination.

Rule 47(b) reads:

"(b) Employes covered by this Agreement who possess necessary qualifications to plan, direct, lead, regulate and co-ordinate the work of other employes will be given consideration for promotion to positions in the foreman class. When two or more employes do possess the necessary qualifications (referred to in the preceding sentence of this paragraph) the senior employe in the successive lower classes, specified in Rule 34(c), shall be selected for promotion to the foreman class."

This Board has consistently held that in agreements of this kind the Carrier has the right to determine the qualifications of its employes and that the Board will not overrule or substitute its judgment unless it is shown that the Carrier's determination was biased, arbitrary and capricious. See Awards 10584 (Russell), 10459 (Wilson), 10403 (Mitchell), 10345 (LaBelle), 10297 (Bonebrake) and many others.

There is no evidence that the Carrier's action was biased, arbitrary or capricious. The only affirmative evidence offered by Employes is Claimant's letter to Mr. Jesse Clark dated December 18, 1957. After reciting his experience he says:

"There has been some remarks by the Carrier that I had not been in the construction gang for some time prior to these ass't foremen positions being put up for bid. That is true because I had bid and was working positions such as T.&T. maintainer and also as a relay maintainer since 1950. The reason I took these positions was that I wanted to make myself proficient in the work of a T.&T. maintainer and as a relay man and also as these positions paid more money. Does the Carrier mean to say that because an employe who has worked as a signalman and as a leader in the gang and then goes to a higher rated and more skilled position sacrifices his chance for promotion to an Ass't foreman's position because he had not worked in the gang for some years. In fact two of the men who were promoted were working in the positions of maintainers, one as a tower maintainer and one as a relay maintainer. Neither of these men had

worked in the gang as long as I had or maintained towers or sections as long or as numerous as I have."

This letter, while self-serving and must be considered as such, actually does not support Claimant's position. He admits that he had not been in the construction gang for some time. There is nothing in it to support a charge of bias, arbitrariness and caprice.

The good faith of the Carrier is affirmatively set forth in the record. When this and three other similar claims of Mashek were still pending in the appeal process, Carrier's Acting Manager of Personnel wrote to the Employees' General Chairman under date of September 5, 1957, in part, as follows:

"In order that we may resolve these cases, it is proposed that you and your Committee meet with the Assistant Chief Engineer Signals and Electric Traction for the purpose of preparing an examination to be given each of the applicants, including Mr. Frank Mashek, to determine their qualifications to plan, direct, lead, regulate and coordinate the work of other employees.

If the foregoing is satisfactory, and it is found that all of the applicants involved possess the necessary qualifications as set forth above, then the positions in question shall be assigned to the two senior qualified applicants; this with the understanding that the junior employee who is removed will not have acquired seniority in the foreman's class."

The examination was to be oral so as not to violate Rule 65(a) which says:

"An employee 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."

In a letter dated September 5, 1957 Employees rejected Carrier's proposal.

Employees now contend that (1) the offer for the examination came too late and (2) that Claimant would have had to compete with Lunsman who already had experience in the position of assistant foreman. The offer of examination did not come too late. In order to satisfy all parties, the Carrier ultimately offered to make a test available to all employees who made application for the position. Mashek's refusal to take such an examination is inconsistent with his claim that he was qualified.

There is no basis to presuppose that the examination would not have been fairly conducted. Employees' Committee would have helped prepare the examination. If the Carrier had shown bias or prejudice against Claimant he still had his remedy under the Agreement.

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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1963.