

**Award No. 11122**

**Docket No. SG-10615**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David Dolnick, Referee**

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**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 #2348, Bulletin #510 to D. J. Lunsman, award made on Bulletin #511 dated April 25, 1957.

Claim is made in view of the fact that Frank J. Mashek, Jr., who is senior to D. J. Lunsman, made application for the position cited above.

(b) The Carrier now pay Frank J. Mashek, Jr., the difference between his respective earnings and the earnings of D. J. Lunsman, overtime included, subsequent to April 29, 1957. [Carrier's Case SG-2-57]

**EMPLOYEES' STATEMENT OF FACTS:** On April 18, 1957, Bulletin No. 510 was issued advertising Position No. 2348, Assistant Foreman with headquarters at Test Gang, Johnson Ave.

Bulletin No. 510 is reproduced herewith and attached hereto, and is identified as Brotherhood's Exhibit No. 1.

On April 25, 1957, Bulletin No. 511 was issued, awarding Position No. 2348, Assistant Foreman, to Mr. D. J. Lunsman.

Bulletin No. 511 is reproduced herewith and attached hereto, and is identified as Brotherhood's Exhibit No. 2.

Inasmuch as an employee senior to Mr. D. J. Lunsman, namely, Mr. Frank J. Mashek, Jr., made application for Assistant Foreman Position No. 2348 and was not awarded the position, General Chairman S. A. Yallowley filed a protest

relay and telephone work, with insufficient knowledge of signal circuits or signal construction, or any other phase of signal work. Consequently, he did not possess the necessary qualifications for the position.

The Carrier, in summarizing its position, desires to emphasize the following points:

1—That Lunsman, having seniority in the Foreman Class, was properly awarded Position No. 2348.

2—That Frank Mashek, Jr., does not possess the necessary qualifications and therefore is not eligible for promotion to a position of Assistant Foreman.

3—The Carrier has the prerogative to determine the fitness and ability of an employee.

4—The Carrier has not bargained away its managerial rights with respect to the selection of a qualified employee for promotion to the Foreman Class.

5—The burden of proof is upon a rejected applicant to establish that he has fitness and ability to occupy a position, and this has not been done.

6—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. 2348, Assistant Foreman, Test Gang, Johnson Avenue Yard, Johnson Avenue, claim as made herein should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim here is similar to the one in Award 11121 where we have discussed the issues and position of the parties in considerable detail. For reasons therein stated we are obliged to conclude that there is no merit to the claim.

**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.