

Award No. 11124

Docket No. SG-10617

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 #2372, Bulletin #513 to J. N. Luquer, award made on Bulletin #515 dated May 29, 1957.

Claim is made in view of the fact that Frank J. Mashek, Jr., who is senior to J. N. Luquer, 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 J. N. Luquer, overtime included, subsequent to May 23, 1957.

EMPLOYES' STATEMENT OF FACTS: On May 13, 1957, Bulletin No. 513 was issued, advertising Position No. 2372, Assistant Foreman with headquarters at T & S Gang #2, Jamaica.

Bulletin No. 513 is reproduced and attached hereto, and is identified as Brotherhood's Exhibit No. 1.

On May 29, 1957, Bulletin No. 515 was issued, awarding Position No. 2372, Assistant Foreman, to Mr. J. N. Luquer.

Bulletin No. 515 is reproduced and attached hereto, and is identified as Brotherhood's Exhibit No. 2.

Inasmuch as an employee senior to Mr. J. N. Luquer, namely, F. J. Mashek, Jr., made application for Assistant Foreman Position No. 2372, 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 June 17, 1957, as follows:

properly substitute our judgment for that of the management because the official charged with the responsibility is usually familiar with the record of the employe, his habits, personality and character, and many other items bearing upon his fitness and ability which cannot reflect in the record presented before this Board." * * *

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

1—The Carrier has not bargained away its managerial right with respect to the selection of a qualified employe for promotion to the Foreman Class.

2—The Carrier properly assigned J. N. Luquer who was the qualified senior applicant.

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

4—There is no proof in the record that the decision of the Carrier's official was made on an arbitrary, capricious or unfair basis.

Predicated on the foregoing, the Carrier has conclusively shown that the instant claim is not supported by any provision of the applicable Rules and Working Conditions Agreement, the agreed-upon interpretations thereof, or the established practices thereunder. Consequently, your Board would be required, in order to sustain this claim, to substitute its judgment for that of the Carrier, a prerogative which this Board admittedly does not possess.

In view of the facts presented and for reasons stated herein, the instant claim is without merit and 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 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 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.