

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Pennsylvania Railroad Company that:

(a) The Carrier violated Article 4, Section 20(d), of the Signalmen's Agreement when it awarded H. L. Sticthenoth, a junior employe, a Signalman's job in Camp No. 7 on Bulletin No. 2 dated March 9, 1959, thus depriving L. D. Renchen, a senior employe, of the position. Seniority dates of the two employes in question are as follows:

L. D. Renchen	— Helper	1-30-53	Mechanic	1-30-56
H. L. Sticthenoth	— Helper	11- 4-55	Mechanic	1-11-57

(b) L. D. Renchen be paid the difference in Signalmen's rate and Helper's rate, until he is properly placed in the Mechanic's class, for the above violation. [System Docket 135 — Buckeye Region Case Z-46]

EMPLOYES' STATEMENT OF FACTS: This dispute involves employes of the Communication and Signal Department (formerly Telegraph and Signal Department) of The Pennsylvania Railroad Company represented by the Brotherhood of Railroad Signalmen (formerly Brotherhood of Railroad Signalmen of America). For the sake of brevity, the agreement between these two parties will be referred to herein as the Signalmen's Agreement; The Pennsylvania Railroad Company will be referred to as the Carrier; the Brotherhood of Railroad Signalmen will be referred to as the Brotherhood; the Communication and Signal Department Employes will be referred to as Signal Employes; and work on signal apparatus will be referred to as signal work.

As indicated by the Statement of Claim, we contend that the Carrier violated the current Signalmen's Agreement when it assigned Mr. Sticthenoth to a Signalman position on Bulletin No. 2, thus depriving a senior employe, Claimant Renchen, of the position. As advertised on Bulletin No. 1 of January 28, 1959, the headquarters of that position is Camp Train No. 7, tour of duty 8:00 A. M. to 12:00 Noon — 12:45 P. M. to 4:45 P. M., regular rest days Saturdays and Sundays, and assigned territory former Cincinnati Division Seniority District.

In a letter dated July 3, 1959, the Local Chairman docketed the claim for discussion with Superintendent-Personnel at a meeting on July 14, 1959. Following the meeting, the Superintendent-Personnel denied the claim by letter dated August 28, 1959. The Local Chairman rejected this decision in a letter dated October 3, 1959, and requested that a Joint Submission be prepared on this matter. Copy of that Joint Submission is attached marked Exhibit B.

Under date of February 4, 1960, the General Chairman listed this matter with the Manager-Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. During the handling of the claim with the Manager-Labor Relations the Employees stated that the Claimant was qualified to fill the position of Signalman (S-703). Although the Claimant had previously demonstrated that he did not possess the required fitness and ability Carrier offered to remand the case to the Superintendent-Personnel and Local Chairman to resolve the issue. Claimant was then given a reasonable test, conducted by a Supervisor-Communication and Signal, in the presence of his Local Chairman, at Rendcomb Junction, Ohio, on January 21, 1961, and failed it.

Following this, the Manager-Labor Relations denied the claim in letter dated September 6, 1961, a copy of which is marked Exhibit C.

So far as Carrier is able to anticipate the basis of the Employees' claim, the sole question to be decided by your Honorable Board is whether the Carrier violated the applicable Agreement when it assigned and awarded the position of Signalman (S-703), advertised on Bulletin No. 1, to other than the Claimant on Bulletin No. 2, effective March 9, 1959, and whether he is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic question here is whether or not Carrier was justified in refusing to recognize Claimant L. D. Renchen's right, based on seniority, over a junior employee awarded a Signalman's job on March 9, 1959. It is indisputable that Renchen was senior to Sticthenoth, the party awarded the job. The company maintains its right to here ignore seniority because of an asserted lack of qualification on the part of Renchen. In support of such right, the following rules are cited, with particular emphasis on the limitations imposed by the emphasized portions:

"SECTION 9.

(a) An employe reduced in class when force reductions are made must, if he possesses the necessary qualifications, accept return to service in seniority order, in an advertised position or permanent vacancy in the class from which demoted, if no bids have been received from qualified employes for such position or vacancy."

"SECTION 18.

(a) Assignments to positions in the leading maintainer, leading signalman, signal maintainer, T&S maintainer, telegraph and telephone maintainer, signalman, assistant signalman or helper classes shall be based on ability, fitness and seniority; ability and fitness being sufficient seniority shall govern."

The rule is well-settled that the determination of fitness of an employe is the prerogative of the Carrier which determination will be sustained unless it appears the action was biased, capricious or arbitrary. Award 12994 (Hall), 12669 (Ives) and others.

Carrier's position that Renchen was unqualified for the job of signalman is based on the following evidence: (1) On June 9, 1958, Renchen was given a so-called "practical test" to determine his qualification as a Signal Maintainer. He failed to qualify. (2) On January 12, 1961, Renchen was given a test to determine his qualification as a Signalman. The Supervisor, C&S, Mr. P. V. Anania, also failed him on this test.

On the other side of the coin we find the following: (1) Renchen's seniority in the Mechanic class dates from January 30, 1956. Subsequently he served as a Signalman, doing the work of a Signalman and drawing commensurate pay, for over two years until June 5, 1958, when he was displaced by a senior employe due to a reduction in force. (2) During such period exceeding two years there is not the slightest indication that his performance was not in all respects adequate to the requirements of the position. (3) Since the denial of the position to Renchen he has nevertheless been paid as a Signalman approximately fifty percent of the time because of the performance of Signalman duties during half of his tours. (4) The test of January 12, 1961, was administered by a supervisor who participated in the previous decision to pass over Renchen. (5) There is no showing that the job to be filled (and which Stricthenoth was awarded) was in any way different from that which Renchen had filled for nearly two and one half years without any recorded or otherwise indicated complaint from Carrier.

We cannot believe that if Ranchen actually lacked the qualifications of a Signalman he would be allowed by Carrier to fill the post for well over two years without any record of deficiency. He lost his original assignment as a Signalman not by demotion but by an exercise of seniority occasioned by a reduction in force. Our conclusion is further buttressed by his subsequent use on Signalmen's duties during one half his tours. While we are perfectly aware that there may be a penumbral area surrounding any particular assignment within the Signal Department, we think the assignment of some Signalman work to Renchen during 50% of his tours clearly reflects the inconsistency of Carrier's position.

At the oral hearing herein it has been urged on behalf of Carrier that the results of the Signal Maintainer test on June 9, 1958 revealed an inability of Renchen to read and understand plans and instructions such as would be required of a Signalman filling the position (Signalman 703) in issue. On the other hand, the Organization's representative at the oral hearing argued that the position of Signalman held by Renchen for over 2 years was in fact a more difficult assignment than that with which we are here concerned. But the record on the property, to which we are limited in our consideration of the issue, offers no enlightenment. There, neither party offered any evidence which would reflect any difference in the work required of an employe under assignment as Signalman 703 and that required of Renchen during his presumptively successful performance as Signalman both before and after the 703 assignment was denied him.

The claim will be sustained, but Renchen will be entitled only to any pay differential not previously covered by the aforementioned periods for which he was paid at the Signalman's rate.

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 violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.