

Award No. 19010
Docket No. SG-18969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

BURLINGTON NORTHERN INC.

(Formerly Northern Pacific Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Northern Pacific Railway Company:

On behalf of Signalman F. G. Nepstad, General District, that he be awarded the position of Signal Maintainer at Pompey's Pillar, Montana, per Signal Department Bulletin No. 59-68, dated July 24, 1968.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of January 1, 1968, which is by reference made a part of the record in this dispute. Of particular pertinence here are Agreement Rules 31(b) and 47(a) and (b) reading:

"RULE 31

(b) Seniority shall consist of rights based on relative length of service of employes as hereinafter provided and may be exercised only when vacancies occur, new positions are created or in reduction in force. Seniority shall be confined to the Eastern, Central and Western Districts, respectively, subject to the provisions of Rule 41.

"RULE 47

(a) Promotions: Promotions from positions in one seniority class to positions in another seniority class within the scope of this agreement or assignment to positions of signal inspector, signal shop foreman, maintenance foreman and signal foreman shall be based on ability and seniority, ability being sufficient seniority shall govern the Management to be the judge subject to appeal.

(b) Except as provided in Rule 47(a), in transferring employes to fill vacancies or new positions in their own seniority class, seniority shall govern."

On July 24, 1968, the Carrier issued its Signal Department Bulletin No. 59-68, advertising for seniority application of employes a position of Signal

Maintainer located at Pompey's Pillar, Montana. Mr. F. G. Nepstad, an employe holding over seven years seniority in class III, the class covering positions of Signal Maintainer, was the senior applicant, but the Carrier nevertheless assigned another and junior employe. As shown by our exhibits Nos. 1 through 10, attached, claim was made on behalf of Mr. Nepstad and handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without settlement. (Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant F. G. Nepstad was employed by the Carrier as a Signal Helper on August 6, 1956. Signal Helpers are identified as Class V in the classification of Signal Department employes. Claimant was stepped up and given a seniority date of September 17, 1956 as an Assistant Signalman-Maintainer in Class IV. He was later promoted to Signalman-Maintainer and given a seniority date in Class III; however, he was subsequently demoted to Assistant Signalman-Maintainer on February 20, 1962 because of failure to satisfactorily perform the duties of Maintainer and given a seniority date of October 3, 1960 in Class III. At the same time he was advised that he had not fully proved his ability in that class and needed additional training. With the exception of filling two short vacancies as Signal Maintainer in 1960 and 1961, his service has been entirely in construction gangs.

On July 24, 1968, the permanent position of Signal Maintainer headquartered at Pompey's Pillar, Montana was advertised for bids. The claimant was the senior employe bidding for the position; however, in the opinion of competent Signal Department officers, he was not qualified to handle the duties and responsibilities of the position. The position was therefore awarded to a junior Signalman-Maintainer who was so qualified. The claim requests that Signalman Nepstad be awarded the position for which he was not considered qualified.

OPINION OF BOARD: On July 24, 1968 Carrier issued Signal Department Bulletin No. 59-68 advertising for applications for the position of Signal Maintainer located at Pompey's Pillar, Montana. Claimant was the senior applicant. Carrier awarded the position to an applicant junior in seniority to Claimant, which action resulted in this Claim. The Organization contends that under Rule 31(b) and Rule 49(a) and 49(c) Carrier was obligated to award the bulletined position to Claimant. Carrier denies that it was required to honor Claimant's seniority for the reason that the (Claimant) did not possess the fitness and ability to cope with the bulletined position.

The controlling rule from the parties' Agreement provides:

"Rule 49(a). Promotions from positions in one seniority class to positions in another seniority class within the scope of this agreement or assignment to positions of signal inspector, foreman or relay shop foreman shall be based on ability and seniority, ability being sufficient seniority shall govern, the Management to be the judge subject to appeal.

(b) Except as provided in Rule 49(a) in transferring employes to fill vacancies or new positions in their own seniority class, seniority shall govern."

The assignment and position in dispute was a transfer in the Claimants own seniority class and not an assignment covered by paragraph (a) of Rule 49. Hence, while we sympathize with the Carrier's desire to avoid placing an unqualified employe in a sensitive position, the provision of paragraph (b) that "* * * seniority shall govern" is mandatory.

We must sustain the claim.

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 1, 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.