

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19891
Docket Number SG-19629

Burl E. Hays, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company that:

(a) The Union Pacific Railroad Company violated the current Agreement, dated April 1, 1962, and namely the "Note" under Rule 2 and Rule 36, when it assigned Mr. C. D. Chidley to the position of Signal Inspector instead of Mr. Johnson.

(b) Mr. N. J. Johnson shall be compensated for the difference between his rate of pay as a CTC Maintainer and the rate of pay of a Signal Inspector, effective with the date of the assignment of Mr. Chidley, July 13, 1970, on Assignment Bulletin No. 6A and continuing for so long as the violation exists. (Carrier's File: A-10425)

OPINION OF BOARD: Claimant alleges Carrier violated the current Agreement, dated April 1, 1962, and particularly the "Note" under Rule 2, and Rule 36, when it assigned Mr. G. D. Chidley to the position of Signal Inspector instead of Claimant, N.J. Johnson.

The facts are that bids were received for this assignment from several persons. Among them were:

Wyoming Division Signal C.T.C. Maintainer N. J. Johnson, who had Class 1 seniority date of January 1, 1944, on old Colorado Seniority District No. 4.

Kansas Division Signal Maintainer G. D. Chidley, who had Class 1 seniority date of November 7, 1945, on old Colorado Seniority District No. 4.

This position of Signal Inspector was assigned to G. D. Chidley, an employee admittedly junior to claimant N. J. Johnson. Claimant entered a protest and filed this claim alleging that Carrier failed to give "due consideration for seniority, fitness and ability" in making this assignment.

Claimant further alleges that Carrier's action in this instance has been "arbitrary, capricious, discretionary . . . (and) in bad faith."

The Board does not feel these allegations by Claimant are sustained by the record.

We feel that Carrier had the right to determine the fitness and ability of Claimant to serve as a Signal Inspector (Award No. 18943 and cases cited therein); that petitioner has not satisfied the burden of proof required that Claimant was qualified (Award No. 18347), and that rules governing seniority cannot be applied irrespective of fitness and ability (Awards No. 96, No. 8198, and many others).

The Board is of the opinion that Carrier acted in good faith, without bias or prejudice, and has not violated any of the Agreements.

We, therefore, will deny 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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.