NATIONAL, RAILROAD ADJUSTMENT BOARD

Award Number 20107
THIRD DIVISION Docket Number SG-19803

Frederick R. Blackwell, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 47-a-paragraph 5, when it assigned Mr. D. E. Smith to the Signal Maintainer's position, headquarters Laughlin Junction, Pa., as per Bulletin 1001-BA dated March 9, 1971.

(b) Mr. D. E. Smith now be allowed three and one-half hours traveling time daily at time and one-half rate of pay. Also, Mr. Smith be allowed nine cents per mile for use of his private vehicle for one round trip daily between Bridgeport, Ohio, and Laughlin Junction, Pa., which is approximately 124 miles; any emergency service he may be called upon to perform at Laughlin Junction, Pa., other than his regular tour of duty.

(Carrier's File: 2-SG-44)

OPINION OF BOARD: When no bids were received on an advertised Signal Maintainer vacancy at Laughlin, Pa., the Carrier assigned the Claimant, Signal Maintainer, D. E. Smith, to the vacancy. When the no-bid vacancy arose two employees junior to Claimant were on the roster in the class of Signal Maintainer. The claim is that under the Agreement an employee junior to Claimant should have been assigned to the vacancy and, accordingly, the Claimant is entitled to travel time and mileage in regard to services performed on the Laughlin position.

The Petitioner argues that Claimant's assignment to the no-bid vacancy was violative of Rule 47 (a) 5 of the Agreement because (1) Claimant was not the junior employee in the class of Signal Maintainer and (2) employees junior to Claimant were on the roster in the class of Signal Maintainer and were "sufficiently qualified" to work the position. The Carrier's defense is that Claimant was the junior employee working in a Lower class who held seniority in the class of Signal Maintainer and who was "sufficiently qualified" for the position.

Rule 47 (a) 5, reads as follows:

"RULE 47 ASSIGNMENTS - HOW MADE

(a) After the closing time for receiving bids the position will be awarded by one of the following procedures in the order indicated:

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*****
*****
*****

5. By assigning the junior employee working in a lower class who holds seniority in the class and is sufficiently qualified."

We find no merit in Petitioner's first argument. The text of Rule 47 (a) 5 plainly and clearly provides that the junior employee working in a lower class must be "sufficiently qualified" for the assignment. Junior amployee status in the class does not by itself meet the conditions of the rule. The junior employee must also be "sufficiently qualified" and, thus, the issue here is a factual one, namely, was either of the Signal Maintainers who were junior to Claimant "sufficiently qualified" to work the no-bid vacancy.

With regard to this factual issue, the Employees' position on the property is found in an April 14, 1971 letter of the General Chairman which states that:

"As far as qualifications under this rule, we feel that Management must have considered all the employees as being qualified as none of them were demoted under Rule 5 (2) or Rule 44 at the time of their promotion; therefore, it must be assumed by the Signalmen's Committee that all are qualified and are in a position to be assigned to maintainer positions under the circumstances in this case."

In its Ex Parte Submission the Petitioner stated the following:

"In its final denial Carrier asserted the two junior man were not qualified.

When Carrier asserted the junior men ware not qualified, it became the moving party and, as such, when its judgment on qualification was challenged, it had the responsibility to support its judgment with competent evidence. Carrier offered <u>nothing whatsoever</u> to support its contention that the junior man were not qualified. On the other hand, the Organization representatives pointed out that the junior men had not been disqualified, which is an indication that Carrier previously

"recognized they were qualified for promotion to the Signalman or Signal Maintainer class, which classifications are defined in Rule 4(a) which reads:

'(a) An employee qualified and assigned to perform signal work shall be classified as a Signalman or Signal Maintainer."'

The Carrier's position on the property is found in a May 27, 1971 letter of the Assistant to Vice-President - Labor Relations which in pertinent part, stated:

"....there were two men junior to D. E. Smith on the roster with seniority in the class for signalmen-maintainers and working in a lower class, but neither of these two men had sufficient qualification to safely and properly perform the work as maintainer at Laughlin Junction.

Smith has previously worked the Laughlin Junction maintainer position and is sufficiently qualified, so that he is the junior sufficiently qualified employe under Rule 47 (a) 5 at this time."

In its Rebuttal, the Carrier states that:

".... In the instant dispute the qualifications of those employees working in a lower class were considered in light of the requirements of the position at Laughlin Junction and the claimant was the most junior employee who met the criteria of being 'sufficiently qualified'."

it is clearly established by the foregoing, and the record as a whole, that two employees junior to Claimant held seniority in the class or craft covered by the advertisement of. the vacant position. We have no doubt that these facts made a prima facie case that each of the junior employees was qualified for assignment to the vacancy, so the next question is whether Carrier offered probative evidence to rebut this prima facie case. The Carrier stated on the property and in its Rebuttal that it considered the qualifications of all involved employees, in light of the position's requirements, before selecting Claimant as the most junior "sufficiently qualified" employee; however, this is but a conclusionary statement or statement of ultimate fact. Nowhere in the record has the Carrier provided evidence of any supportive or explanatory facts as a basis for this conclusion. We therefore believe the criteria set forth in our prior Award 15444 (Dorsey) is applicable:

". . ..when Petitioner made a prima facie case, as it did, the burden of going forward with the evidence shifted to Carrier. The unsupported assertions of Carrier did not satisfy its burden.,.."

Similarly, in this dispute, the Carrier has not gone forward with probative evidence to rebut the prima facie case made by the Petitioner and, consequently, on the whole record and under the cited authority, we must conclude that employees junior to Claimant were qualified under Rule 47 (a) 5 for assignment to the Signal Maintainer vacancy at Laughlin, Pa. Accordingly, we conclude that Carrier violated Rule 47 (a) 5 in assigning Claimant to the Laughlin no-bid vacancy and we shall sustain the claim.

In conclusion we note that we have carefully studied the Awards cited by Carrier, Awards 11572, 16309, and others, wherein this Board ruled favorably to Carrier in disqualification disputes. In those Awards a senior employee was denied assignment due to lack of qualifications and, for that reason the assignment went to a junior employee. But here, it is the junior employees who are asserted by the Carrier to lack qualifications and, for that reason, the assignment went to the senior employee who then protests that such was improper. The two situations are quite dissimilar and, consequently, we do not believe the referred to Awards have application to this dispute.

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,

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1974.