

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20521**
Docket Number SG-20378

William M. Edgett, Referee

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

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Missouri Pacific **Railroad** company:

On behalf of Signalman E. A. **Wuertz** for difference between hourly rate of Signalman and Foreman's rate account being **senior** bidder for the Foreman position in Gang No. 104, but not assigned by bulletin. (Carrier's File: **B225-607**)

OPINION OF BOARD: Claimant bid on a Foreman position and was the senior bidder. Carrier issued a notice stating there were no qualified bidders, re-bulletined the position and assigned **it** to a junior **man**. The Organization took issue with the assignment by letter, and later, on April 8, 1972, filed a claim, citing **Rule** 500(a), which reads:

Rule 500

: "Promotion: (a) Promotions to positions within the scope of this agreement shall be based upon ability and seniority; ability being sufficient, seniority shall **govern**.

The ability sufficient for promotion to positions of Electronic Technician, Retarder Yard Technician or Foreman shall be determined by an examination given during regular working hours by the Signal Engineer or his representative and the General Chairman or his representative. The examination shall consist of 50 questions **from** a list of 200 questions previously agreed upon by the Signal Engineer and the General Chairman. The senior **employee** who makes a minimum grade of 80 on the examination will be promoted. Applicants for positions of Electronic Technicians and Retarder Yard Technicians must have a Federal **Communications Commission** license, second class or better."

During the handling of the claim on the property Carrier advised the General Chairman that Claimant had not requested examination for the position. The record shows that Carrier did so on December 13, 1972, some time after the junior man had been placed in the position. **Rule** 500(a)

does not give Carrier the option of giving or not giving the examination. It also does not give the bidder the option of taking it or not taking it. As stated in the Rule "the ability sufficient for promotion to positions of . . . or **Foreman** shall be determined by an examination...."

It is clear that **Claimant** should have been given the examination. The Board believes that he should now be given that opportunity. If he is successful his claim is sustained. If he is not, his claim is denied. Should he elect not to take the examination his **claim** is denied.

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 claim should be disposed of as stated in the Opinion.

A W A R D

Claim disposed of as stated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of **November** 1974.