

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21044**
Docket Number SG-20995

William M. Edgett, **Referee**

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines),

(a) the Southern Pacific Transportation Company (Pacific Lines) violated the current Agreement between the Company and it's **Employees** of the Signal Department represented by the Brotherhood of Railroad Signalmen and particularly Paragraph 6 of the Agreement, Carrier File SIG 1-91 dated April 6, 1971, covering position of Special Signal Technician.

(b) Mr. Noxin be assigned to the position of Special Signal Technician, Headquarters, Elko, Nevada as advertised in Signal Department Notices **#153 W** dated April 24, 1973, **#155 W** dated May 14, 1973 and **#158 W** dated May 31, 1973 which was awarded to a junior **employee** Mr. M. H. Bell, Jr., in Signal Department Notice 8162 W.

(c) Mr. Noxin be paid the difference between the rate of his present position and the rate of Special Signal Technician until such time as he is properly placed on position of Special Signal Technician at **Elko**, Nevada.

(d) this claim be a continuing claim until settled.

/Carrier's File: SIG 148-227

OPINION OF BOARD: The parties' agreement, in paragraph 6 (SIG 1-91) contains the following language:

"6. Positions of Special Signal Technician shall be advertised to signal **employees** working **within** limits of the operating division /see Note below/ on which position is to be established. Assignment to position of Special Signal **Technician** shall be made by the Company from among **employees who make** application therefor, based upon qualifications and seniority. At some locations, qualifications may include possession of second-class radio license. When a senior applicant is not given favorable consideration because of alleged lack of **qualificattions**, the matter will be reviewed by the Signal Supervisor with the Local Chairman before a permanent **assignment** is made."

(Note: An **"operating** division" on this property at time of this claim included signal **employees** of more than one seniority district.)

After bulletining a new position of Special Signal Technician at Elko, Nevada several times Carrier placed a junior bidder on the job without reviewing the matter with the Local Chairman as required by Paragraph 6. The Local **Chairman** wrote to Carrier and insisted that the Senior Bidder be assigned. Carrier admitted its violation of the Agreement and offered two possible **solu-**
Kons to the problems. They were:

- "A. **Review** qualifications of all applicants with various local chairmen involved with award of Technician's Position to stand es awarded in Bulletin 158W.
- B. **Rebulletin** position of **Technician-Elko**, with award to be made per agreement. Please **acknow-**
ledge and advise."

The Organization rejected Carrier's pmpoaal and **continued to insist** that Carrier **assign** the **senior bidder** or pay **damages**. At the **outset** the Board **wishes to observe** that this **is** not a **case** in which the **record indicates** that Carrier **has wilfully disregarded its obligation to consult** with the Organization. Although **in** its submission to the Board Carrier observes **that** review of the bidder with the Local Chai- would no doubt not change its position with respect to filling the vacancy, the **comment** came late in the game and after all attempts to resolve the matter on the property had been completed. It was essentially an afterthought. What is more important is that Carrier **immediately** acknowledged **its** error and offered realistic steps to correct it. These included recognition of the fact that no permanent **assignment** could take place until the agreed upon procedure had been completed. Of course, when the Local Chairman rejected all approaches to the problem other than **assignment** of the senior bidder there **was** no opportunity for **constructive** consultation about the **qualifica-**
dons of the bidders.

The Agreement contemplates a good faith review of the qualification of persona not selected by both Carrier and the **Employees**. Unless both parties **remain** open minded the **review** will be **meaningless**. It takes two to tango, and it **takes** two to **carry out the review** procedure **provided by this** Agreement. Neither **side is** without fault in the failure which **is** repreaanted by this claim. To assess damages against Carrier on this record would be **manifestly** unfair. The Board declines to do so.

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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 this claim should be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

ATTEST: A. W. Pauls

Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.