

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21242  
Docket Number SG-21103

Irwin M. Lieberman, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Robert W. **Blanchette**, Richard C. Bond and John H.  
( **McArthur**, Trustees of the Property of  
( Penn Central Transportation Company, Debtor

**STATEMENT OF CLAIM:** Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad  
**Company:**

System Docket 899  
Western Region - Fort Wayne Division Case No. 18-13-73

(A) **Claim** that on April 16, 1973 the Carrier violated the current **C&S** Agreement, mainly Article **4**, section 3 and 17, by awarding F. D. Smith a Lead **Signalman's** job on bulletin **#FW-9**, thereby causing Mr. L. G. Sweigard to be furloughed.

(B) Claim L. G. Sweigard bid on the job and should have been awarded said job.

(C) Claim that according to the **C&S** Seniority Roster District **#18** dated January **1**, 1973 and **posted April 1**, 1973, Mr. L. G. Sweigard has **signalman's** rank **#18** with date of **February 3**, 1970 and Mr. **F. D. Smith** has signalman's rank of **#19** with date of April 6, 1970.

(D) Claim that Mr. L. **G. Sweigard** be **compensated** for **all** time lost account of violation<sup>8</sup> stated in (A) and (B) above. Time Lost to be determined jointly by Local representative and carrier official.

**OPINION OF BOARD:** On April 2, 1973 Carrier advertised the position of Leading Signalman in the Ft. **Wayne** Division Gang. No bids were received from **employees** possessing seniority as Leading Signalmen. Signalman F. D. Smith and Claimant bid for the position, and effective April 16, 1973 the position was awarded to F. D. Smith. The seniority dates of the two employees are as follows:

|                | <u>Signalman</u> | <u>Asst. Signalman</u> | <u>Helper</u>    |
|----------------|------------------|------------------------|------------------|
| F.D. Smith     | April 6, 1970    | April 6, 1970          | February 3, 1964 |
| L. G. Sweigard | February 3, 1970 | August 28, 1968        | June 10, 1968    |

The pertinent provisions of the **Agreement** provide:

**"ARTICLE 4 - SENIORITY AND ASSIGNMENT TO POSITIONS**

**Section 1 - Seniority classes.**

(Effective August 1, 1950) The **following** groups of **employees** shall each constitute a separate seniority class:

- (a) Inspectors, Foremen.
- (b) Assistant Inspectors, Assistant Foremen.  
(Groups (a) and (b) will sometimes hereinafter be referred to as the 'Foreman Class.')
- (c) Leading Maintainers, Leading Signalmen.
- (d) Signal Maintainers, Telegraph and Signal Maintainers, Telegraph and Telephone Maintainers, Signalmen.
- (e) Assistant Signalmen.
- (f) Helpers." \* \* \* \* \*

**"Section 3 - Date of other than foremen.**

- (a) (Effective August 1, 1950) The seniority of **employees** covered by Sections 2, 3, 4 and 5 of Article L (groups (c), (d), (e) and (f) Listed in Section 1 of this Article) in a particular class shall begin at the time they acquire an advertised position in that class **in** the district in which employed, and they shall acquire and **accumulate** seniority in all Lower classes.
- (b) Temporary service in a higher class shall not establish seniority in that class, except **when** the temporary service is performed as the result of bulletin and award of a temporary position or vacancy in accordance with Section 20 of this article.

Groups from which **employees** shall be appointed-to positions in foreman class

- (c) (Effective August **1**, 1950) **Employees** shall be appointed to positions in the foreman class only from groups covered by Section **1** (c) and (**d**) of Article 4, and they shall retain and continue to **accumulate** seniority **ity** in the classes and in the seniority district in which they held seniority prior to the appointment.

Date of helpers

- (d) Helpers shall not acquire **seniority** rights and their names **shall** not be shown on the roster until they have **worked** as helpers for six **months in** any twelve month

period. After having worked six months **in** any twelve month period as helpers, their names shall be placed on the roster with their seniority dating from the first day counted in calculating the six **months'** period."

"Section 18 - **Qualifications**

- (a) **Assignments** to positions **in** the **leading** maintainer, leading signalman, signal maintainer, T. & S. maintainer, telegraph and telephone maintainer, signalman, assistant signalman or helper classes shall be based on ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern.
- (b) **Employees** covered by this Agreement who possess the necessary qualifications to plan, direct, Lead, **regulate** and coordinate the work of other **employees** will be given consideration for promotion to positions in the foreman class. When two or more **employees** do possess the necessary qualifications (referred to **in** the preceding sentence of this paragraph) the **employee with** the most service in the classes covered by this **Agreement** shall be selected for promotion to the foreman class. "

Petitioner's position is that Claimant should have been awarded the position in question because he holds more **signalman** seniority than Smith and **signalman** seniority rather than helper seniority should prevail. It is also contended that Smith was awarded the position because he (and not Claimant) is a protected **employee** under the Merger Agreement. In essence, it is argued that total service seniority is not provided for in Article 4, for purposes of **promotion**, and Carrier had no right to use that standard **in** this case.

Carrier argues that there is no rule support for Petitioner's position. Carrier points out that the Agreement has **no provision** as to consideration of seniority in lower classes, with the exception of the Foreman's class, and does not give more weight to Signalman's seniority than to Helper's seniority for promotions of this type. Carrier takes the position that since no **employees** with seniority in the Class bid for the vacant position, Carrier was free to select anyone for the position; it is made clear, however, that Carrier did indeed select the **employee** with the greatest total seniority under the Agreement.

First it is noted that Article 4 establishes seniority by Class only. Similar disputes, involving Maintenance of Way employee have been considered by this Board in the past. The Leading case, Award 11587, states:

"In the Agreement before us we note that in Article 3, **Rule 1**, it is stated that '**Employees** are entitled to **consideration** for positions **in** accordance with their seniority ranking as provided in these rules.' Immediately following . . . we find a **circumscription** which confines system **gang employees** seniority rights as to new positions or vacancies to seniority in 'their respective **classifications.**' . . . **Reading** the Rules together **we** conclude that no **employee** holding seniority **in** one of the other three groups has any contractual priority because of such seniority, to be assigned to a permanent position of Steel Bridge Foremen. Therefore, since Claimant admittedly, had no seniority in the '868 Department **Foreman**' classification, we will deny the claim."

**This** case was followed by Awards 20206 and 20085, which held similarly.

Petitioner's point with regard to the **Merger** Agreement protection with **respect** to Smith, although undoubtedly correct, has no relevance to the dispute per se. The Organization argues by inference that the successful applicant for a promotion **must come** from the next lower class; there is no contractual basis for this position. It is noted, however, that in accordance with Article 4, Section **3(c)** promotions to the position of Foreman must be made **from** the Leading Maintainers and Leading Signalman and the next lower class only. There is no comparable Language for the position of Leading Signalman **promotions.** It is understandable for the Organization to presume that promotions should be based on seniority in the next lowest position; however, the **record** is **barren** of facts indicating any practice of this type in the past and, as indicated heretofore, there **is** no apparent rule support for the position. Consequently, the Claim **must** be 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 Agreement was not violated.

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Claim denied.

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

ATTEST:

*A.W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1976.