

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22003
Docket Number SG-22063

Robert A. Franden, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{
{ Con Rail (Former Penn Central
{ Transportation Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York, New Haven & Hartford Railroad Company:

On October 20, 1975, the Carrier issued Bulletin No. 31 - 75, advertising a Signalmans position with headquarters located at Readville, Massachusetts. On November 17, 1975, the Carrier issued Bulletin No. 31A - 75, which awarded the position of Signalmans with headquarters at Readville to W. F. Coulombe, employe number 709393 a Signal Helper located in the Signal Gang at Readville. Instead of awarding the position to Mr. Coulombe, the Carrier should have applied Rule 36 of the Signalmans Agreement and notified Mr. C. C. Carter of the position that was available to him as outlined in Rule 5 paragraph (b) of the Signalmans Agreement. By failing to notify Mr. Carter as outlined in Rule 36, the Carrier violated Mr. Carters rights and allowed a junior employee to go ahead of him in a higher seniority class.

Mr. Carter returned to service on December 1, 1975, when the Carrier applied Rule 36 of the Agreement and notified Mr. Carter there was work in the Assistant Signalmans class available for him at Readville. Mr. Carter replied promptly when notified of the available work at Readville .

Because of his Assistants rank Mr. Carter should have been allowed three months to qualify as a Signalmans according to Rule 5 paragraph (b) of the Agreement. Because of the violation by the Carrier and his subsequent loss of a work opportunity, Mr. Carter should be paid all the earnings earned by Mr. Coulombe from the first day that Mr. Coulombe covered the Signalmans position awarded him on Bulletin No. 31A - 75 until December 1, 1975, the day that Mr. Carter returned to service at Readville on the Assistants position. From December 1, 1975, Mr. Carter should be paid the difference between the Assistants rate he was earning and the Signalmans rate that Mr. Coulombe was earning until Mr. Coulombe left that position.

Mr. Carter in the future may place a bid on a Signalmans position and should be allowed to apply the rights granted to Assistants under Rule 5, paragraph (b) of the Agreement and if Mr. Carter qualified for the Signalmans position he should be placed ahead of Mr. Coulombe in the Signalmans rank because of the violation of his rights by the Carrier.

[Carrier File: Case No. BRS NH-30]

OPINION OF BOARD: On October 20, 1975, Carrier's Supervisor C&S issued a Bulletin advertising a temporary position of Signalsman, with headquarters at Readville, Massachusetts. No applications were received for the position from employees possessing seniority in the Signalsman class and there were no employees reduced or furloughed from that class. However, Signal Helper W. F. Coulombe made application for and was awarded the position.

In a letter dated January 9, 1976, the Local Chairman submitted a claim in behalf of C. C. Carter, Assistant Signalsman, reading the same as the claim set forth in the Statement of Claim. The essence of the claim is that the Carrier should have recalled Carter from furlough and awarded him the position of Signalsman in lieu of awarding the position to Coulombe. The Division Engineer denied the claim by a letter dated February 5, 1976, stating, among other reasons, that Claimant was not qualified for the Signalsman position.

The Petitioner relies primarily on Agreement Rule 5, which provides in pertinent part:

"(b) Assistant signalmen or assistant signal maintainers on a seniority district shall be promoted in the order of their seniority to signalmen or signal maintainers if a position as such is open and they have qualified to perform signalman's or signal maintainer's work in less than four years. If a man so promoted fails to meet the requirements of the position within three months, he will be restored to a position of assistant signalman or assistant signal maintainer to which he is entitled where he may secure the necessary training and experience to complete his apprenticeship."

This rule provides for the promotion of Assistants in seniority order if a position is open and they have qualified to perform signalmen's work. The wording of this rule does not require the promotion of unqualified employees.

We have consistently held that when the qualifications of an employe are questioned, it is the employe's burden to prove qualification if he can.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978.