

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22293
Docket Number SG-22040

James F. Searce, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railroad Signalmen**
{ **The Long Island Rail Road Company**

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Claim No. 1

SG-13-76

(A) Carrier violated the current agreement when it denied Mr. J. P. Backes, T&T Maintainer, headquarters Ronkonkoma, New York, position #6128, which was bulletined an advertisement #1115 and awarded to a junior qualified employee, Mr. E. Howarth, on bulletin #1117, copies of which are attached hereto for ready reference.

(B) Carrier should now be required to compensate Mr. J. P. Backes, T & T Maintainer, the difference of his present rate \$7.9952 per hour and that of Assistant Foreman entrance rate \$8.8891 per hour, which equals \$0.8939 per hour, for as long as the violation is allowed to stand. It is noted that this is a continuing claim and that the monetary claim will of course change with the length of time that the junior employee occupies position #6178. Also that Carrier should be required to amend the seniority roster to the extent that Mr. Backes' name appear before the junior qualified employee.

Claim No. 2

SG-16-76

On behalf of E. J. Sivaslian for the difference in pay between that of Signalman and Assistant Foreman(\$9.1244 per day), commencing February 4, 1976, and that he be awarded seniority in the Foreman's class effective 2/4/76."

OPINION OF BOARD: This case joins along list of other ones between these same parties over similar or identical circumstances. Perhaps most similar is Award 20569, wherein there, as here, the Carrier awarded the position of Assistant Foreman to a qualified employee who was less senior than the Claimant; here, there are two Claimants more senior than the promoted employee. Prior Boards have

consistently held that the authority to **determine qualifications** for a position is the **exclusive right** of the Carrier and, once determined, **the burden** shifts to the Organization to show such actions are **arbitrary** and capricious.

In 20569, the Bard defined the method by which "arbitrariness and **impropriety**" on Carrier's part could be demonstrated **in such cases: establishment of a claimant's qualifications for the position in question by probative evidence.** The Organization argues that, if **some means of testing validity of the Carrier's actions is not available, then the provisions of Rule 47(b) relative to seniority are rendered meaningless.** **It is equally obvious that less senior employees, in a given classification, can attain both experience and seniority in a higher class, to the detriment of more senior employees in the same classification, as per Rule 34 of the Agreement, where they are afforded the opportunity to hold such jobs on a temporary basis.** **This Board affirms the authority of the Carrier to make the judgment as to qualifications for positions; but we likewise hew to the line of reasoning in Award 20569 as heretofore cited.**

In this case, by **means** of its various exchanges of **communications on the property**, the Organization endeavored to meet its **burden of demonstrating the Claimants' qualifications.** **While concluding that the Organization has not done so here, due to a lack of clarity in certain of its exhibits and some unsubstantiated assertions, we consider it worthy of note that a test for arbitrariness and impropriety in this type of claim is not beyond the force of reason.**

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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Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1979.