

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 22313
Docket Number X-22306

Nathan **Lipson**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation
(**(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 and Hartford Railroad Company:

On behalf of **D. R. Tarasevich**, Assistant Signal Maintainer, account violation of Rule 53, as outlined in the initial claim letter of February 14, 1976, to Division Engineer **J. P. Fox**."

Case No. **B.R.S.** NH-327

OPINION OF BOARD: The Claimant held position of Assistant Signal Maintainer at South Bay, Massachusetts. The Carrier advertised two (2) Signalmen positions on December 17, 1975 by Bulletin No. 46-75. The Claimant did not bid on either of the positions and one position was awarded to a junior **employee in** the Signalmen's class.

The Organization protested on the grounds that the **Bulletin** was not posted **at** the headquarters point, South Bay, in accordance with Rule 53, which reads, inter alia, as follows:

"Bulletins as referred to in **Rule** 52 shall be posted at headquarters of the seniority district **involved** for a period of ten days. Copies of bulletin notices shall be sent to the Local Chairman. During such ten days the **employees** may file their applications with the official whose name appears on the bulletin."

(The Organization argues vehemently that Claimant should not be prejudiced by loss **of his** seniority in the Signalmen's class for failing to bid up, when Carrier failed to post the Bulletin as per the Agreement.) Carrier argues with equal fervor that the Bulletin was posted not **only** at South Bay but also at Readville, a contiguous point, where Claimant, by his actions, demonstrated he read other

Bulletins and made application for other positions posted at the same time.

It is apparent from a studied consideration of this record, that it would be impossible to decide which of the opposing asserted facts are correct. (However, we are convinced of the merits of the Organization's argument that it would be palpably unfair to wrest Claimant's Signaller's seniority from him on the basis of such a disputed factual showing.) We are equally convinced it would not be proper to award the **compensation** requested, for the same 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 claim be disposed of in accordance with the Opinion.

A W A R D

Claimant's seniority in the Signalmen's class is preserved, but no compensation is allowed.

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

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1979.