

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25681
Docket Number SG-25844

George S. Roukis, **Referee**

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: {
(National Railroad Passenger **Corporation** (Amtrak)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

(a) Carrier violated the Memorandum of Agreement between the National Railroad Passenger Corporation and its employees represented by the Brotherhood of Railroad Signalmen, particularly Section IV, paragraph (a), when on December 13, 1982, the Carrier awarded a position of Signal Material Foreman to a junior employee instead of claimant Mr. F. W. Rudolph.

(b) The Carrier should now be required to compensate Mr. Rudolph for all loss of pay between the rate of pay he now holds and that of a Signal Material Foreman's rate of pay and be placed upon the position of a Signal Material Foreman. This is a continuous claim. [Carrier file NEC-BRS-SD-1611

OPINION OF BOARD: The Organization asserts that Carrier violated Section IV, Paragraph "A" of the Memorandum of Agreement between the National Railroad Passenger Corporation and the Brotherhood of Railroad Signalmen when the position of Signal Material Foreman was awarded to a junior employee on **December** 13, 1982. It argues that Claimant is a qualified Material Foreman, and thus, as the senior employee should have been awarded the disputed position. It avers that he was patently qualified to perform the duties of the position, and notes that the question of his qualifications had not been previously raised on the property. It contends that the junior employee was given posting time to learn the position that, in essence, was competitively detrimental to Claimant.

Carrier maintains that Claimant was not qualified for the position, and contends that at no time during his employment history did Claimant **ever** hold a position in the Signal Department. As such, it argues his experience and background are unrelated to the task requirements of the Signal Material Foreman's position. It observes that there is a distinct difference in the duties, responsibilities and qualifications between the Signal and Communication areas, which by extension demonstrably shows that Claimant lacked the necessary prerequisite signal background. It avers that at the time the position was awarded Claimant was holding a 'field', not Material Communication Foreman's position, as contrasted with the junior employee who was holding an Assistant Signal Foreman's position. It asserts that consistent with Section IV, Paragraph "A" of the Agreement, it properly assigned the position to the senior qualified bidder.

In considering this case, the Board concurs with Carrier's position. We have carefully examined Claimant's background within the context of the position's required specifications and the defining parameters of Section IV, Paragraph "A" of the above cited Agreement and find that he was not qualified for the Signal Material Foreman's position. As the moving party in this proceeding, it was incumbent upon Claimant to develop the evidentiary justification to prove that he was unmistakably qualified, but his background and experience does not indicate that he had signal experience. This was an important consideration and a mandated requirement of the position. To be sure, there is no question that his seniority was greater than the junior employe, but his experience did not provide him with the requisite qualitative skills and knowledge to perform the duties of the position. In effect, he was not prepared to assume the responsibilities of the Foreman class signal position. Accordingly, and consistent with Section IV, Paragraph "A", Carrier's selection of the junior employe was not improper or violative of Claimant's Agreement rights. Under this provision, Carrier is required to award the position to the senior qualified bidder, but the senior bidder must be qualified. From the record, we find no persuasive evidence that Claimant was qualified for the position, nor any correlative evidence that Carrier's action was discriminatory or capricious. The determination of fitness and ability is a prerogative of the employer, and it was properly exercised in this instance. (For a further explication of this principle see Third Division Award Nos. 20243, 14765, 16360.)

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

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.