

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road Company (LI):

On behalf of C. Curto for seniority and assignment as an Assistant Foreman, beginning on or about June 19, 1986, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 24, when it awarded the position advertised as position No. 117, Assistant Foreman, Communications Gang No. 51, headquartered at Jamaica, New York, to a junior employee on or about June 19, 1986." Carrier and General Chairman file SG-12-86.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, a mechanic, applied for an Assistant Foreman position on a Communications Gang. The Carrier tested the Claimant to determine his qualifications for this position, but it was assigned to a junior employee. The reason given by the Carrier for not selecting the Claimant was that it took him too long to complete the test. According to the Carrier, this reflected upon his technical knowledge and work attitude. The Organization asserts the Claimant was furnished with defective equipment and was required to take time off to arrange for a funeral. It is undisputed the Claimant took fourteen hours and ten minutes over a period of five days to complete the assignments which comprised the test while the junior employee took only two and one-half hours.

Rule 24 governing the qualification for Foreman positions reads as follows:

"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 senior employee in the successive lower classes - specified in paragraph (c) of Rule 11 - shall be selected for promotion in the foreman class."

Under this Rule, the Carrier may determine the means by which it assesses an employee's qualifications under the specified criteria. The time necessary to complete certain tasks may be important under some circumstances, and the Carrier may set such time standards where relevant. It may not, however, make the testing into a race between two applicants who are both able to do the work. The Rule requires that the senior of all qualified employees be selected for promotion. The Carrier cannot bypass seniority to select the best qualified applicant.

In this case, it does not appear that the Carrier had established any time limits for completing the test. In fact, the Organization asserts the Claimant was told by the Assistant Supervisor of Communications that time would not be a factor. This assertion has not been refuted by the Carrier. The Claimant had a right to rely upon this advice, and the Carrier is not privileged to change the rules retroactively.

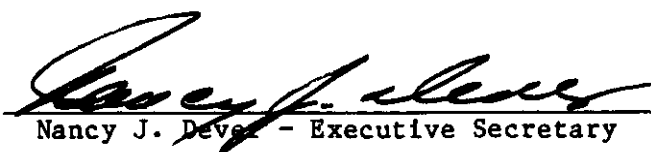
The record shows the Claimant performed satisfactorily on all parts of the test, except for the time it took him to complete it. We find, therefore, that the addition of the time limitation after the fact was arbitrary and unreasonable. But for that requirement, the Claimant would have been the senior qualified applicant. He should have been appointed to the job and is entitled to the seniority and compensation as if he had been.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.