

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (AMTRAK):

Claim on behalf of P. J. Cubello, Maintainer Test C&S, headquartered at the Lancaster Relay Shop, Lancaster, PA. At the time of occurrence Mr. Cubello was a displaced Maintainer C&S who had been headquartered in Baltimore, MD.

(a) claim that the Carrier violated Rule 13 (par. b) of the Agreement Between the Carrier and the Brotherhood of Railroad Signalmen, effective February 1, 1987. The agreement was violated when the Carrier would not allow Mr. Cubello to displace a junior employee (J. H. Smith) in the mechanics class on January 19, 1988. Mr. Smith is headquartered in Baltimore, MD.

(b) claim that Mr. Cubello be allowed to displace Mr. Smith. Also claim that Mr. Cubello be paid the applicable mileage rate round-trip from his home to his designated headquarters beginning on January 20, 1988 for all regularly assigned days. The claim for mileage will be continuous until such time that Mr. Cubello is allowed to displace Mr. Smith, or when he returns to another advertised position headquartered in Baltimore, MD." Carrier file NEC-BRS-SD-332.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

At the time of the incident that gave rise to this case, Claimant was employed by Carrier as a Maintainer C&S, headquartered in Baltimore, Maryland. He was displaced from his position on January 19, 1988. He attempted to displace a junior employee, who was headquartered in Baltimore as well, but held a Communication Maintainer position. Claimant was not allowed to displace the junior employee and in order to continue to work a job he wanted, he had to displace to the Lancaster, Pennsylvania, Signal Shop.

In March 1988, the Organization filed a claim contending that the Claimant should have been allowed to displace the junior employee and claiming mileage expense from his home to his designated headquarters each day that he was forced to work away from Baltimore, Maryland. During the handling of this case on the property, an issue of Carrier's untimely response to Claimant's appeal was raised by the Organization. Carrier responded to the Organization's claim on all points as follows:

(1) Claimant was given a qualification test as a Communication Maintainer. He failed the test and consequently was not qualified to perform the duties of a Communication Maintainer. Thus, he was not allowed to displace the junior employee.

(2) Carrier responded in a timely manner at all levels to the claim. Notwithstanding, the Board has no jurisdiction in the matter, since the timeliness issue was abandoned on the property. As evidence of this, it was not contained in the Statement of Claim filed with the Board on October 25, 1989.

The Board also concludes that Claimant was not qualified as a Communication Maintainer and consequently he had no right to displace a less-senior qualified employee.

The Organization in this instance has, as might be expected, filed a claim to protect the seniority concept that is the backbone of the Agreement. It has not, however, attempted to argue that a more senior employee who is not qualified in a particular position has an absolute right to bump a less senior qualified employee. In the instant case, there is no evidence to demonstrate that Claimant could perform the work of a Communication Maintainer. Denying him a bump into such a position was appropriate.

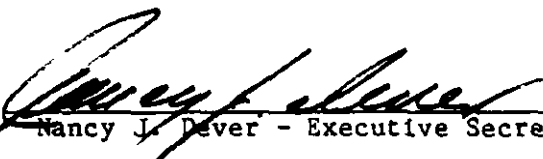
A W A R D

Claim denied.

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Award No. 28995
Docket No. SG-29004
91-3-89-3-423

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.