

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30927
Docket No. SG-31352
95-3-92-3-842

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation
((AMTRAK-N)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (Amtrak-N):

Claim on behalf of T.W. Drew, et al., for assignment of seniority in the Assistant Signalman/Maintainer and helper classes, account Carrier violated the current Signalmen's Agreement, particularly the May 5, 1997 Training Agreement, as amended by Agreement dated July 12, 1984, when it failed to assign seniority for the Claimants in those classes."

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 employee within the meaning of the Railway Labor Act as approved June 21, 1934.

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

Initially, Carrier raises two procedural challenges. It says the claim before the Board is not the same as that raised on the property. In addition, it says the claim was not handled properly on the property, thus depriving this Board of jurisdiction.

Upon careful review of the on-property record, we find both procedural challenges to be without merit. We find, therefore, that this Board does have jurisdiction of the dispute.

Prior to 1982, the parties had a Memorandum of Agreement dated May 5, 1977 (signed June 14, 1977) which governed the hiring of employees into the Communications and Signal Department. Its intended purpose was to provide for a supply of candidates progressing from Helper to Trainee to the Maintainer classification. The Memorandum contains a number of provisions that deal, for example, with pay rates, the training program itself, establishment of seniority, promotion to Maintainer, payment of expenses, and the like. Section II was entitled Training Program. Paragraph P. of the Section reads as follows:

"A Trainee cannot be displaced. In reduction of force, the first jobs to be abolished will be Trainee positions."

Sometime after the May 5, 1977 Memorandum was in place, the parties felt a need to establish two electronics specialty classifications. The parties negotiated Letter Nos. 10 and 11 and signed them on August 12, 1982 to accomplish this objective. Letter No. 10 established the Electronic Specialist classification and provided for seniority and other facets of the job. Similarly, Letter No. 11 established the Electronic Technician classification. Except for the descriptions of the work performed by the two classifications and a small difference in pay rates, Letter Nos. 10 and 11 are virtually identical. Both letters provided for the establishment of seniority dates equal to the employment date for employees who began their service with the Carrier as applicants for one of the two classifications.

Both letters made identical provisions for applicants who do not successfully complete training. If an applicant had prior seniority, he or she could exercise it. For new hires, however, the letters read as follows:

"If newly hired for the position of Electronic Specialist [or Electronic Technician], they shall be released from the Company's service."

It seems clear from Letter Nos. 10 and 11 that they did not provide any additional seniority rights to those applicants who successfully attained the classifications of Electronic Specialist or Electronic Technician. The letters were apparently "stand-alone" documents because each explicitly states that they supersede "... any pre-existing agreement on this subject...."

On July 12, 1984, however, the parties revised Section II P. of the May 5, 1977 Memorandum to read as follows:

"An employee, other than a trainee, who is entitled to exercise his seniority may displace a trainee and will thereby place himself at the headquarters location of the trainee but as an Assistant Signaller/Maintainer. A trainee entitled to exercise seniority may displace a junior trainee thereby assuming the headquarters of that trainee but without otherwise changing his standing in the trainee program. In reduction of forces, the first jobs to be abolished will be trainee positions.

It is agreed that Communications and Signals employees who have more than 60 days of service and who have not acquired an Assistant Signaller/Maintainer seniority date will establish same as of the effective date of this Agreement. Thereafter, Communications and Signals employees will automatically acquire an Assistant Signaller/Maintainer seniority date on the 61st day of employment."

It is this second paragraph of the Section II P. revision that led to the instant dispute.

Claimants are all employees who were new hires to the Electronic Specialist or Electronic Technician classifications. All have more than 61 days of service in their respective classifications. The Organization felt they should all have been included on the seniority roster for the Maintainer classification when it was updated and republished, because of the Section II P. revision. This claim resulted when their names did not so appear.

Carrier's position is that Claimants are not entitled to seniority in the Maintainer classification. It says the May 5, 1977 Memorandum of Agreement never applied to the Electronic Specialist/Technician classifications and, therefore, neither did the Section II P. revision.

This dispute is, of course, a clash of sharply conflicting applications of the same provisions. From the language itself, both parties' positions are plausible. However, their true intent is far from clear. Unfortunately, the on-property record is of no help. It provides insufficient factual evidence to support either party's position and leaves us with a situation of irreconcilable differences. The Organization had the burden of proof to establish the validity of the claim. On this record, we must find that the burden has not been satisfied. As a result, the claim must be dismissed.

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AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.