

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31238
Docket No. SG-31684
95-3-93-3-701

The Third Division consisted of the regular members and in addition Referee Jacob Seidenberg when the award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SP):

Claim on behalf of K.A. Rosebure for the following:

1. Assignment to the position of Signal Technician at West Colton, California.

2. Payment of the difference between Signal Technician rate and the rate of the Claimant's position from March 2, 1992 until the Claimant is assigned to the Signal Technician position.

Carrier violated the current Signalmen's Agreement, particularly Rule 42, when it assigned a junior employee to the Signal Technician position and denied the Claimant's application for the position."

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.

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

The Parties to the dispute waived right of appearance at the hearing thereon.

This dispute devolves upon the proper application of the existing contractual seniority rules. Relevant contract provisions are the following:

"Rule 42 - Promotion to Higher Class

(a) Promotion shall be based on ability and seniority, ability being significant, seniority shall prevail.

(b) An employee accepting promotion will be granted thirty (30) days in which to qualify."

The April 11, 1990 Agreement states in its penultimate paragraph:

"The purpose of the letter is to preserve the right to bid or displace on the position of Signal Technician . . . holding seniority in Class III on the effective date of this Agreement. Employees promoted to Class III after November 1, 1989, will sustain seniority rights in Class I only upon being assigned to a position in Class I."

The Agreement provides that a Signal Maintainer is to be a Class III position while a Signal Technician is to be a Class I job. These two positions are involved in this dispute.

At the time of this claim, the Claimant was a Signal Maintainer in the West Colton Yard. He bid for the position of Signal Technician which the Carrier had advertised on February 11, 1992. While he was the most senior bidder he was not awarded the job. Instead on March 2, 1992 the position was awarded to employee Rabenstein, who held Class I seniority, but who was junior to the Claimant in Class III seniority.

It is necessary to set forth certain antecedent facts to understand all the niceties of this claim.

In July 1991, due to a retirement, a Class I Signal Technician position became available at West Colton. On August 1, 1991, the Carrier announced the vacancy would be advertised. The Claimant, a Signal Maintainer (Class III) and Signal Maintainer Rabenstein, also a Class III Signal Maintainer, together with several other Class III employees, took a Carrier test to determine whether they could satisfactorily perform the work of the advertised vacant position.

The Carrier was contractually allowed to prescreen the job applicants as a result of March 2, 1990 Agreement (which Agreement the Organization canceled on August 8, 1991). All the applicants who took the test failed and on September 9, 1991, the Carrier declared the vacancy as unfilled.

On October 25, 1991, the Carrier advertised a Signal Technician position in Los Angeles. Signal Maintainer Rabenstein took the Signal Technician test, passed it, and was awarded the job on February 11, 1992. The Claimant did not bid on this vacancy, nor did he take the test.

As previously stated, the Carrier readvertised the Signal Technician vacancy in West Colton on February 11, 1992. The Claimant and other Class III employees bid on this vacancy. Since a Signal Technician test had already been administered for this position at this location, none was given at that time.

On March 2, 1992 Signal Technician Rabenstein was awarded the West Colton vacancy. Thereupon the Claimant filed the claim on April 25, 1992 which the Carrier rejected on June 4, 1992.

The Organization requested the Carrier to compensate the Claimant for the difference between his regular earnings and the rate of the Signal Technician position.

The Organization asserts that the Carrier violated the Claimant's rights under Rule 42 as well as under the provisions of the April 11, 1990 Memorandum Agreement. It states that the Claimant had held a Class III position on the Western Lines. Under this 1990 Agreement, the Organization asserts that employees who had established seniority on the Western Lines prior to the 1990 Agreement and, by virtue of their Class III seniority had a preference for technician positions over any junior employees. The Organization asserts the parties agreed that the Class One seniority would be a determining factor in assignments for technician positions only when there were no applications from employees with Class III seniority predating the 1989 Agreement.

In the instant claim, the Claimant, with his Class III seniority, was the senior bidder for the vacancy. It denies that the Class I seniority of Mr. Rabenstein, a junior employee, could be applied as the determining factor in awarding the vacancy. The Organization contends that the 1990 Memorandum established the Claimant's status as the senior applicant by virtue of his Class III seniority predating the 1989 Agreement.

The Organization states the Carrier failed to comply with Rule 42 which states that ability being sufficient, seniority shall prevail. It adds there is no doubt that the Claimant was senior to Mr. Rabenstein. Moreover, the Carrier violated the Rule when it did not afford the Claimant 30 working days to qualify for the position. He was not accorded even one day to qualify. The Organization concedes that it cancelled on August 28, 1991, the pre-screening test because of Carrier abuses similar to this case. It states the pre-screening test was never intended to replace the employee's right to be given the opportunity to qualify. The Organization also states that if this were not so, there never would have been any need for the Carrier to seek such an agreement in the first place.

The Organization requests the Board to sustain its position because the Carrier violated the Agreement when it arbitrarily denied the Claimant's application and awarded the position to a junior employee.

The Carrier denies there is merit to the claim because the vacancy was awarded to Signal Technical Rabenstein who established his ability to perform the West Colton job while the Claimant failed to do so. In August 1991, both the Claimant and Mr. Rabenstein, together with other Class III Signal Maintainers, took the test for the West Colton vacancy and they all failed. Shortly thereafter, Mr. Rabenstein took the test for the Los Angeles vacancy and passed it, while the Claimant chose not to take that test. The Carrier asserts that in passing the test for the Los Angeles vacancy, Mr. Rabenstein established his Class I seniority as of February 11, 1992.

The Carrier states the Organization notes the cancellation of the March 2, 1990 prescreening Agreement as evidence it needed an agreement to test the ability of its employees. The Carrier asserts that it has always been a management right to determine the basic qualifications of its employees. The March 2, 1990 cancellation only removed the restriction on Management's basic right.

The Carrier states it afforded equal opportunity to all its signalmen to demonstrate their ability to perform the work of Signal Technicians. The right to determine ability is a management function that cannot be successfully challenged absent a showing of arbitrariness or capriciousness on the part of the Carrier. It adds the burden to prove this is on the Organization, i.e., that the Carrier was arbitrary.

The Carrier states the Organization is in error in stating that it had to grant the Claimant a 30 day period for him to qualify. The Carrier asserts this is an attempt by the Organization to take away Carrier's right to manage its personnel fairly and impartially. The Carrier further states the 30 day qualifying period was for the purpose of developing satisfactory performance on the new job and it was not the time to acquire original fitness and ability.

The Carrier states the claim should be rejected because the Claimant was denied the position, despite his seniority because he did not pass the test for Signal Technician the only time he took the it, even though he had the same opportunities as the successful candidate to retake the test. The Carrier requests the Board on the basis of this record to deny the claim in its entirety.

The Board finds an analysis of the record does not sustain the claim and it must be, and is hereby, denied. The Carrier acted properly in awarding the West Colton Signal Technician position to Mr. Rabenstein because he had demonstrated that he fulfilled the requirements of Rule 42 concerning ability versus seniority. The Claimant and Mr. Rabenstein took the test for Signalman Technician in August 1991 at West Colton and both candidates failed. However, in October 1991 Mr. Rabenstein took and passed the test for Signal Technician in Los Angeles and acquired Class I seniority. The Claimant elected neither to bid nor take the test for the Los Angeles vacancy. The Carrier was justified in concluding that Mr. Rabenstein possessed more ability for the job that did the Claimant within the purport and intent of Rule 42.

The Board also finds the Organization is in error in contending that Rule 42(b) grants an applicant or candidate for a promotion to higher class job 30 working days to qualify. This provision applies only to applicants or candidates who have been tentatively accepted for the vacancy. It does not apply to applicants or candidates applying for the vacancy.

In summary, Mr. Rabenstein, having successfully passed a valid test for the position, and having thereby acquired Class I seniority, it was contractually proper for the Carrier to have selected Mr. Rabenstein for the West Colton vacancy.

AWARD

Claim denied.

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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 1st day of November 1995.