

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31647
Docket No. SG-31600
96-3-93-3-599

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

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of R.D. Cook, S.L. Myer and A.L. Tribioli that they be evaluated for the position of Electronic Specialist and the senior qualifier be assigned a seniority date in that class effective July 30, 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 2-A-2 and Appendix F, when it failed to award the position of Electronic Specialist to the senior qualified applicant for the position advertised on Bulletin No. 7-92 on July 22, 1992. Carrier's File No. SG/504. General Chairman's File No. RM2352-105-1092. BRS File Case No. 9083-CR."

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 or 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.

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

The situation which exists in this case is aptly set forth by the Organization in its Submission as follows:

" . . . the entire crux of this dispute is whether the Claimants were 'qualified bidders.' Clearly, if any of the Claimants were qualified bidders, they would have had preference to the position over the previous incumbent."

The situation which brought about this dispute is found in the fact that an Electronic Specialist position was advertised on July 22, 1992. The position was awarded effective July 30, 1992, to the same rostered Electronic Specialist who had been the previous incumbent of the position. This action by Carrier prompted the Organization to initiate the claim which is the subject of this case on behalf of the three named individuals none of whom are rostered Electronic Specialists.

The Organization argues that under the provisions of Appendix "F", the Claimants should have been tested, and, if found to be qualified as Electronic Specialists, should have been given preference when awarding the advertised position over the previous incumbent. The Organization further contends that one of the Claimants (Tribioli) " . . . had already bid an Electronic Specialist position and was deemed qualified by Conrail when Mr. Harte was originally awarded the specialist position." Additionally, the Organization posits that Carrier was obligated to determine by testing the Claimants to see if they were, in fact, qualified for training as Electronic Specialist and then assign the senior Claimant to the advertised position and apply the training provisions of Appendix "F".

Carrier's position is that the provisions of Rule 2-A-2 were properly applied in this instance; that there was no evidence presented to show that any of the Claimants were ever trained or qualified as Electronic Specialists; and that Appendix "F" specifically provides that Carrier alone is entitled to determine those employees who are to be trained as Electronic Specialists.

The applicable agreement provisions which are involved in this dispute are as follows:

"RULE 2 - SELECTION OF POSITIONS

* * * * *

2-A-2. An employee cannot be awarded a position he has just vacated unless he has been displaced or there are no other qualified bidders for the vacated position."

"RULE 3 - SENIORITY

3-A-1. Each class in the following groups shall constitute a separate seniority class:

Group 1

- (a) Inspector**
- (b) Foreman**
- (c) Assistant Inspector
and Assistant Foreman**
- (d) Maintainer-Test**
- (e) Maintainer and Signalman**
- (f) Trainee, Assistant
Maintainer and Assistant
Signalman**
- (g) Pre-trainee and Helper**

Group II

- (h) Electronic Specialist**
- (I) Electronic Technician**
- (j) Retarder Technician"**

"APPENDIX 'F'

The following applies to Electronic Specialists:

- A. Positions of Electronic Specialists will be advertised in the seniority district involved. In the event the position is not thereby filled, it will be advertised throughout the Company.**

- B. Applicants for positions of Electronic Specialists must be knowledgeable in electronics theory and must possess the requisite capabilities to successfully complete a training course. All applicants will be given written tests and on the basis of such tests, past work experience and individual qualifications, a determination will be made by the Company as to which applicants are qualified for training.
- C. Applicants selected will be compensated during the training period at the rate of the last position held.

The individual who vacated and then re-bid the position in question had established seniority in the electronic specialist class in accordance with the terms and conditions of Rule 3-A-1. None of the Claimants had any seniority standing in this class. Rule 2-A-2 is clear in its meaning and intent. If an employee vacates a position, he/she cannot immediately return to that same position unless in the interim one of two things occurs: first, if he/she is subsequently displaced or, second, if there are no other qualified bidders for the vacated position.

It is the Board's determination on the basis of the evidence and rule language as found in this case that there were no other qualified bidders for the vacated position and the previous incumbent was properly assigned thereto on the basis of his established seniority in the class. Appendix "F" is a detailed agreed-upon procedure which provides the procedures for the procurement of qualified Electronic Specialists. It provides for a training period and procedure which includes schooling and possibly on-the-job training after which testing will occur to determine qualifications after which a standing is established on the Electronic Specialist Roster under Rule 3-A-1. It does not require that untrained individuals must be assigned to bulletined Electronic Specialists positions where, as here, there is a bidder who is qualified and already rostered in the class, albeit the previous incumbent of the position. In addition, Appendix "F" is extremely clear in its provision that ". . . a determination will be made by the Company as to which applicants are qualified for training."

As for the assertion that one of the Claimants had been previously "deemed qualified" for an Electronic Specialist position, there simply is no evidence or proof in this case record to support such an assertion. The Board has often held that assertions standing alone are not probative evidence.

Therefore, inasmuch as nothing is found in this case record to support the alleged violation of either Rule 2-A-2 or Appendix "F", the claim as presented is denied.

AWARD

Claim denied.

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 29th day of August 1996.