

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33484  
Docket No. SG-33961  
99-3-97-3-429**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:**

**Claim on behalf of M. A. Graf for reinstatement to his mechanic’s position, with payment of any wages and restoration of any seniority lost as a result of his demotion from the mechanic’s class on January 4, 1996, account Carrier violated the current Signalman’s Agreement, particularly Rule 64, when it demoted the Claimant and discontinued paying him 100% of the mechanic’s rate. Carrier’s File No. SG-13-96, BRS File Case No. 10344-LL.”**

**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.**

**Parties to said dispute were given due notice of hearing thereon.**

Claimant, at the time of the events giving rise to this dispute, was employed as a mechanic and was paid 100 percent of the mechanic's wage rate. Claimant was the most junior mechanic when, in 1995, he was displaced from his position. There was no other position available within his classification. Claimant continued to be paid as a mechanic. On December 28, 1995, Carrier issued a bulletin advertising several vacancies in the mechanic's classification. Claimant failed to bid on any of the bulletined vacancies. On January 22, 1996, Carrier notified Claimant that, because of his failure to bid on any of the vacancies, his mechanic's seniority was frozen and his pay was reduced to the Assistant Signalman classification.

The Organization contends that Carrier violated Rule 64. The Organization maintains that the practice in similar situations has been to allow displaced mechanics to continue in the mechanic's class and to utilize such unassigned mechanics in temporary positions.

Carrier responds that Rule 64 does not guarantee any employee a permanent assignment in the mechanic's classification. Carrier argues that this is made clear by Rule 60(c). Carrier maintains that the practice has been to keep an employee in his class even though he has exhausted seniority, provided that the employee bids on every vacancy bulletined within his class. Carrier urges that it acted in accordance with this practice when it froze Claimant's seniority and reduced his pay after he failed to bid on the bulletined vacancies.

Rule 64(b) provides:

"For all Assistant Signalmen hired effective February 27, 1987, and thereafter, there will be a new hire entry progression as follows:

1st 365 calendar days	70% of the mechanic's rate
2nd 365 calendar days	75% of the mechanic's rate
3rd 365 calendar days	80% of the mechanic's rate
4th 365 calendar days	85% of the mechanic's rate

Assistant Signalmen subject to the wage progression who are permanently promoted to a mechanic's position will be paid 95% of the mechanic's rate. After 365 calendar days, their rate will be 100% of the mechanic's rate."

Rule 60 provides:

**“(a) When forces are reduced or positions are abolished, employees affected thereby may exercise seniority in the class or classes in which they possess seniority and in which they are qualified, but subject to the limitations set forth in paragraphs (b) and (c) of this Rule, within five days from the date displaced; and the employees displaced from such exercise of seniority may likewise exercise seniority. The five-day time limit in which to exercise seniority also applies to Assistant Signalmen reduced to the Helper class under Rule 29, paragraph (c) of Rule 30 and Rule 31.**

**(b) An employee affected under the provisions of paragraph (a) hereof, if not the junior employee in the seniority class, shall have the right only to displace any employee of the same seniority class and he must exercise such right of displacement. If he fails to exercise such right, he shall forfeit seniority in that seniority class.**

**(c) An employee, after having exhausted seniority in the class in which employed, including the junior employee in a class, need not exercise seniority in a lower class or classes but may elect to accept furlough, without impairment of seniority.”**

It is apparent that Rule 64 provides for a wage progression and is not a guarantee against loss of a position due to a reduction in force. Rule 60 provides that where there is a reduction in force, an employee whose position is abolished or who is displaced by another employee's exercise of seniority, must exercise seniority within his class or forfeit seniority. If the employee is the most junior employee in his class, and consequently cannot exercise seniority within his class, Rule 60(c) gives the employee the option of exercising seniority in a lower class or accepting a furlough.

In the instant case, Claimant neither exercised seniority in a lower class nor accepted furlough. The parties agree that a past practice informs the interpretation of Rules 60 and 64 and governs the instant case. They disagree over what that past practice is. The Organization maintains that the practice has been to keep displaced mechanics in unassigned status and use them to fill temporary positions. Carrier maintains that the practice has been to keep displaced mechanics in their class as long as they continue to bid on all vacancies that arise, but to demote them if they fail to bid.

The Organization had the burden to establish the past practice on which it relies. Specifically, the Organization had the burden to establish that displaced mechanics were maintained in unassigned status within the mechanic's class even if they failed to bid on bulletined vacancies. The Organization offered no evidence to support the practice that it asserted existed. On the other hand, Carrier's claimed practice of reducing a displaced unassigned mechanic to Assistant Signalman if the mechanic fails to bid on a bulletined vacancy in the mechanic's class is consistent with Rule 60(b)'s requirement that an employee whose position is abolished or who is displaced from his position must exercise seniority to any position within his class if one exists. Accordingly, in the absence of proof that the practice has been to maintain displaced mechanics in unassigned status regardless of whether they bid on bulletined vacancies, the claim must be 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 22nd day of September 1999.