

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34147
Docket No. SG-35455
00-3-99-3-359**

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
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Co. (former Southern Pacific):

Claim on behalf of L.J. Harmon, for payment of the differential between the Assistant Signalman’s rate and the Signalman’s rate starting February 20, 1998, and continuing until this dispute is resolved, and for a Signalman’s seniority date of February 20, 1998, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it failed to assign the Claimant to the position advertised in transaction No. 871010-BRS 00024. Carrier’s File No. 1133061. General Chairman’s File No. SWGC-1827. BRS File Case No. 10957-SP.”

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.

The fact situation in this case is reasonably clear and not really in dispute. The Claimant was an Assistant Signalman. He had no seniority in the Signalman class. In February 1998, the Carrier advertised for bid a Signalman position (Signal Maintainer). There were no bids received from anyone with Signalman seniority. The Carrier thereupon re-bulletined the position and again no bids were received from employees in the Signalman class. However, at this juncture, another Assistant Signalman who was junior as Assistant Signalman to the Claimant requested to be placed on the Signalman position. The junior Assistant Signalman was thereupon placed on the Signalman position and was awarded a Signalman seniority date effective March 5, 1998. He was subsequently displaced by a senior Signalman on March 6, 1998.

The applicable Agreement Rule which is involved in this dispute reads as follows:

**“RULE 50
NO VALID BIDS RECEIVED**

When a position is advertised for bid and no valid bids are received and the position is to be filled, the junior unassigned signalman will be assigned. If there is no junior unassigned signalman available, then the available senior assistant signalman is to be assigned.

If the position is to be abolished, the notice of abolishment will be included on the next advertisement or assignment notice as information to the employees.”

The Organization argued that Rule 50 is mandatory in nature and, therefore, when no bids were received from employees in the Signalman class, “then the available senior assistant signalman is to be assigned.” It contends that the Claimant was the available senior Assistant Signalman and he should have been assigned when no bids were received from anyone in the Signalman class.

The Carrier’s argument is twofold. It contends first that the practice on this property is to rebulletin positions for which no bids are received; and secondly, that the Claimant had not yet progressed in his Assistant Signalman training program to be considered a qualified Signalman and, therefore, he had no demand right to the Signalman position.

In rebuttal, the Organization argued that the junior Assistant Signalman who was ultimately assigned to the Signalman position on March 5, 1998, also had not completed his

Assistant Signalman training program and therefore he had no demand right to be assigned to the Signalman position ahead of the Claimant.

The language of the applicable Rule is clear and unambiguous. However, even with this clear and unambiguous Rule language, the Carrier retains the managerial right to determine qualifications for this or any other position. In this case, it is obvious that neither of the Assistant Signalmen here involved had completed their respective training programs. The Carrier's argument relative to a practice of rebulletining positions for which no bids are initially received from employees in the class is not challenged or disputed by the Organization. However, the Carrier's action of assigning to the Signalman position a junior Assistant Signalman who had not completed his Assistant Signalman training program does not lend credence to its position relative to the meaning and effect of Rule 50.

It is the Board's conclusion that the Claimant was, in fact, mishandled when the junior Assistant Signalman was awarded a Signalman seniority date ahead of the Claimant on March 5, 1998. The proper remedy to this dispute in the Board's opinion is to allow the Claimant a Signalman seniority date of March 5, 1998, immediately ahead of the junior employee here involved and to award the Claimant the difference in pay between the Assistant Signalman and Signalman rate of pay for the one day on which the junior employee was paid as a Signalman prior to his being displaced by the senior Signalman.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of June, 2000.