

**\*\*CORRECTED\*\***

**Form 1                    NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35553  
Docket No. SG-35421  
01-3-99-3-311**

**The Third Division consisted of the regular members and in addition Referee Roy J. Carvatta when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (Amtrak)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (NRPC-S):**

**Claim on behalf of J.K. York II to establish a seniority date in the Maintainer's Class of July 3, 1997, and for payment of the differential between a Maintainer and a Trainee starting on July 3, 1997, and continuing until he is allowed to qualify for a Communication Maintainer's position on the New York test board. Carrier's File No. NEC-BRS (S)-SD-771. General Chairman's File No. RM3137-102-0298. BRS File Case No. 10912-NRPC(S).”**

**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.**

Because there are conflicting assertions as to whether or not time limits were met that cannot be resolved from the presentations made, the claim will be considered on its merits.

The Organization contends that the Carrier violated the Agreement between the parties, particularly Rules 5(c), 12(a), 12(e) and Appendix A-4A when it repeatedly ignored the Claimant's request to be tested on NORAC and, as a result, was denied the opportunity to qualify as a Communication Maintainer at the New York Test Board. The consequence of the Carrier's refusal to allow the Claimant to exercise his rights was that the senior employee was deprived of the opportunity to be promoted, while a junior employee continued to enjoy the benefits of the promoted position.

The Organization contends this problem was brought to Assistant Chief Engineer E. K. Holt's attention on several occasions. At a meeting with General Chairman R. E. McKenzie and the Local Chairman, Holt stated all trainees would be trained and tested on NORAC in seniority order.

The Carrier contends the Communication Maintainer position at the New York Test Board required the successful applicant to be qualified on NORAC. The Carrier alleges the Claimant failed to timely enroll in a Rules class and obtain the requisite qualifications prior to the position being awarded. The Claimant's failure to timely obtain qualifications necessary to be awarded the position was solely his responsibility.

The Carrier failed to refute the Organization's contention that the Assistant Chief Engineer stated that all trainees would be trained and tested on NORAC in seniority order. However, there are other mitigating factors here. The record indicates that the Claimant obtained NORAC qualifications on July 29, 1997. Further, the manner in which Trainees now obtain NORAC qualifications was subsequently addressed in the Assistant Chief Engineer's March 1998 instructions, as well as in subsequent revisions to the parties' Training Agreement. As such, the issue before the Board is now moot. In view of the anomalous and unique circumstances in this case this Award should not be considered to have any precedential value.

### **AWARD**

**Claim sustained in accordance with the Findings.**

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**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 24th day of July, 2001.**