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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35591
Docket No. SG-34755
01-3-98-3-483**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

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 R. A. Waidler for payment of the difference between the Signal Technician and Assistant Foreman rates for eight hours, account Carrier violated the current Signalman’s Agreement, particularly Rule 25, when it used a junior employee to cover an Assistant Foreman position on February 24, 1997. Carrier’s File No. SG-02-97. BRS File Case No. 10708-LI.”

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.

This claim filed on April 15, 1997 protests the Carrier's designation of junior Signal Technician Lanzone to cover an open Assistant Foreman position on February 24, 1997 rather than the Claimant, as a violation of Rule 25(a), which states as follows:

"Assignments to positions in the Signals and Communications Departments shall be based on ability, fitness, and seniority; ability and fitness being equal, seniority shall govern."

The Organization argues that filling higher-rated positions should be based on seniority. The Carrier contends that Rule 25 deals with the order of filling open bulletined positions, not one day vacancies caused by illness. It asserts that a long-standing practice exists since at least 1970 of blanking positions and hi-rating employees without regard to seniority, citing Fourth Division Award 4517. The Carrier notes that Lanzone was the senior qualified Electronic Technician at the time the Assistant Foreman was out ill on February 24, 1997, as the Claimant was still in training for such position, and argues that, even if Rule 25(a) applies, its determination that the employees were not equally fit was reasonable and not arbitrary, citing Public Law Board No. 1894, Award 1. Finally, the Carrier asserts that it may consider qualifications, availability, and the specific tasks to be accomplished as well as seniority when hi-rating employees.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of Rule 25 in this case. It did no more than disagree with the Carrier's assertion of a past practice of hi-rating employees without regard to seniority and failed to respond to its contention that it may consider a number of factors other than seniority in hi-rating employees. The Organization was unable to show that the Claimant and Lanzone were equally fit to fill the Assistant Foreman in the Electronic Shop vacancy created on February 24, 1997 by illness, and, thus, that the Claimant's seniority should prevail over Lanzone's alleged superior qualifications. Absent such showing, the Organization is unable to substantiate a violation of Rule 25(a), and the claim must fail.

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 24th day of July, 2001.