

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35754
Docket No. SG-35556
01-3-99-3-478**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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:

Claim on behalf of A.M. Young for payment of the difference between the Maintainer’s rate and the Maintainer (Communications) rate, beginning November 20, 1997, and continuing until the Claimant is awarded the position of Maintainer (Communications) as bulletined in Advertisement No. 139-SD3-1097, account Carrier violated the current Signalmen’s Agreement, particularly Rules 11 and 12, when it awarded the Maintainer (Communications) position to a junior employee on November 20, 1997. Carrier’s File No. NEC-BRS(S)SD-787. General Chairman’s File No. RM3186-65-0798. BRS File Case No. 10926-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.

This claim filed on January 14, 1998, protests the Carrier's failure to award the Claimant a Maintainer (Communications) position pursuant to a bulletin in November 1997, and its award of that position to a junior employee, as a violation of the Claimant's seniority rights as set forth in Rules 11 and 12. Rule 12 requires that an advertised position be awarded to the senior qualified bidder. The pertinent part of Rule 11, Qualifications, is set forth below:

"(a) Assignments to positions of Maintainer C&S, Maintainer, Signalman, Assistant Signalman, or Helper shall be based on ability, fitness, and seniority; ability and fitness being sufficient, seniority shall govern."

The Claimant, a Maintainer, previously took the Communications examination on October 18, 1993 and passed it. However, he was not awarded a position at that time. In accordance with the Carrier's Procedure Manual, Section PERS 4.1 which states that test results are only valid for a one year period for an employee not working the position, the Claimant was required to retest on November 27, 1997, at which time he failed to achieve a passing grade. The Carrier determined that he was not qualified for the Maintainer (Communications) position, and awarded it to the next most senior qualified applicant.

The Organization argues that the Carrier's Procedure Manual was not negotiated with the Organization and cannot be relied upon to defeat the Claimant's contractual seniority rights. It notes that the Claimant previously qualified for the position. The Carrier contends that it has the right to utilize a test to determine fitness and ability for a position. It asserts that its procedure requiring retesting after a one year period for employees not performing the position is reasonable due to technological advances in the field and safety concerns associated with having an unqualified employee working. The Carrier argues that its determination that the Claimant was not qualified for the position based upon his test failure is in accord with Rule 11 and Carrier's right to determine fitness and ability.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of either Rule 11 or 12 in this case. Those provisions recognize the Carrier's right to determine an employee's fitness and ability for a position prior to awarding it; the Claimant's seniority rights only apply once it has been established that he is qualified to fill the bulletined position. There is no contest to

the Carrier's ability to test to determine qualifications, because it has been doing so without objection since 1989 and the Claimant himself took a prior test in 1993. There is no dispute that the Claimant failed to pass the test for the Maintainer (Communications) position in November 1997. We find no valid basis upon which to challenge the application of the Carrier's Procedure Manual Section PERS 4.1 to the position in issue, or its reasonableness, because there is no contention that such procedure has not been equally applied to all applicants similarly situated to the Claimant. The denial of the disputed position to the Claimant was based upon his lack of qualifications. Accordingly, the claim must fail.

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 24th day of October, 2001.