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**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35756  
Docket No. SG-35561  
01-3-99-3-489**

**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 Brother W. L. Riffin for all overtime earned by Foreman J. C. DiGiacomo, two hours travel pay at the time and one-half rate, and a mileage allowance of \$15.75 for each day commencing October 23, 1997 and continuing thereafter, account Carrier violated the current Signalman’s Agreement, particularly Rules 11 and 12 when the position of Foreman, Gang No. E-502, headquartered at Odenton, Maryland, was awarded to a junior employee. Carrier’s File No. NEC-BRS(S)SD-782. General Chairman’s File No. RM3181-65-0698. BRS File Case No. 11048-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 December 18, 1997, protests the Carrier's failure to award the Claimant the Foreman position at Odenton, Maryland, pursuant to Bulletin No. 114-SO3-1097 effective October 23, 1997, and its assignment 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:

"(b) Employees covered by this Agreement who possess the necessary qualifications to plan, direct, lead, regulate and coordinate the work of other employees will be given consideration for promotion to positions in the Inspector and Foreman and Assistant Inspector and Assistant Foreman classes. When two or more employees do possess the necessary qualifications (referred to in the preceding sentence of this paragraph) the employee with the most service in the Helper class shall be selected for promotion to the Inspector and Foreman and Assistant Inspector and Assistant Foreman classes."

Foremen must maintain qualification on specific Operating Rules including AMT-2, which is valid for a two year period. The Claimant, assigned to the position of Foreman at the Wyebridge Construction Trailer in Washington, D.C., at the time of this dispute, had last qualified on AMT-2 on January 5, 1994, and let his qualification lapse without re-qualification. He was scheduled to attend a five day training camp which included AMT-2 re-qualification on July 22-26, 1997, but was told by his Supervisor that he and the rest of his gang could not attend due to pressing service needs, but that they would be rescheduled. The Claimant requested his Supervisor to reschedule him in September 1997 but was told that he could not get in a class until December, which he agreed to attend. The Claimant stated that his AMT-2 training has always been scheduled by his Supervisor in the past, upon his request.

The incident giving rise to this claim was an October 7, 1997 posting for a Foreman position at a different location, which the Claimant was the senior bidder on. Because AMT-2 qualification was needed, the Claimant requested the aid of his Supervisor in obtaining it in a timely fashion, and his statement reveals that he was told that as long as he got his AMT-2 qualification up-to-date before the job was awarded on paper, he would be given the position. Applications were accepted until noon on October 13, 1997 and an award notice was posted on October 14, 1997, naming junior employee J. C. DiGiacomo as the successful bidder for the position effective October 23, 1997.

**The Claimant received his AMT-2 qualification on October 15, 1997. The position in issue was abolished on May 20, 1998.**

**The Claimant's statement asserts that he has let his AMT-2 qualification expire in the past, but this is the first time his bid for a job was not accepted because his AMT-2 qualification was not up-to-date. He alleges that he is the only employee held out of a job because of this, and cites two specific instances of employees being awarded jobs and permitted to get their qualifications up-to-date thereafter. The Carrier's response to the Claimant's statement does not dispute the fact that he was permitted to continue working as a Foreman without a current AMT-2 qualification or that he did not attend his earlier scheduled 1997 class due to his Supervisor's determination of service requirements, but contends that the Claimant's lack of action for 21 months prior to this time is what resulted in his qualification lapsing.**

**The Organization argues that it was the Carrier's action that prevented the Claimant from obtaining his AMT-2 qualification, he was promised the position in issue if he re-qualified prior to its award, the effective date of the position was October 23, 1997 after the Claimant had re-qualified and there was no contractual requirement to immediately award the position on October 14, 1997. It also asserts that the Carrier's policy of requiring re-qualification prior to awarding a position was not consistently applied, noting that the Carrier changed its policy shortly after this claim to permit employees 30 days after being awarded a position in which to bring their AMT-2 qualification up to date. The Organization also argues that the regulation requiring re-qualification every two years was not negotiated with the Organization and cannot be relied upon to defeat the Claimant's contractual seniority rights.**

**The Carrier contends that it did not violate Rule 12 in awarding the position to a junior employee, because the Claimant was not a qualified bidder at the time or prior to its award to DiGiacomo. It asserts that it was the Claimant's responsibility to keep his qualifications up to date, and it was his inaction in letting his AMT-2 lapse and waiting 21 months to re-qualify, not the Carrier's cancellation of his scheduled training, that caused him to lose the bid for this position. The Carrier argues that employees must be held to their obligations to keep up their qualifications in a timely fashion and cannot be permitted to require the Carrier to put on special training for them when they determine that a bid suits their fancy. The Carrier asserts that it clearly has the right to require qualifications for this position, and that the doctrine of res judicata should apply, citing Third Division Awards 25681 and 28995. Finally, the Carrier contends**

that the claim is excessive because there is no Agreement support for awarding travel pay or mileage as compensation for time and money spent by the Claimant traveling from his home to his regular assignment during the claim period.

A careful review of the record convinces the Board that, while there is some appeal to the Carrier's argument that it was the Claimant's responsibility to keep his qualifications current, and that his failure to do so made him unqualified on the date the position was technically awarded, we find extenuating circumstances exist in this case to support the conclusion that the Carrier was at least partially responsible for the Claimant's qualification coming one day after the award, but eight days prior to the actual starting date of the position. There is no dispute that the Claimant did attempt to update his classification earlier, was prevented from doing so by his Supervisor's determination of the Carrier's service needs, and requested that his training be rescheduled in September, prior to the posting in issue. It is true that the Claimant could have re-qualified prior to January 5, 1996 when his AMT-2 lapsed, and perhaps should have, but it is also clear that the Carrier permitted him to continue in his Foreman position despite this action and did not find it necessary to disqualify him from his current position either before or after denying him this bid.

The record also establishes that other employees similarly situated to the Claimant have been permitted to get their AMT-2 qualifications up to date after receipt of a position requiring same, rather than prior to its award. It appears that the Carrier changed its policy shortly after the facts giving rise to the instant claim to grant a 30 day period after obtaining a bid position to re-qualify. All of these circumstances which distinguish this case from others relied upon by the Carrier, lead us to conclude that, although the Claimant was technically not qualified for the Foreman position in issue at the time of its award, he was improperly denied his seniority rights under Rule 12 by the Carrier's failure to permit him to qualify prior to, or after, awarding the position to a junior employee.

However, with respect to the requested remedy, the Board finds no Agreement support for an award of travel time for the time the Claimant spent commuting from home to work on his regular assignment (which is not travel associated with his assignment under Rule 35) or the payment of mileage for such travel which is unrelated to when an employee uses his private automobile for company business under Rule 37. Accordingly, we direct that the Claimant be compensated the difference between the

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**amount of overtime earned by DiGiacomo and the Claimant during the period between October 23, 1997 and May 20, 1998.**

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