

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35830
Docket No. SG-35947
01-3-00-3-20**

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation Company (former C & O -
(Pere Marquette)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O-PM):

Claim on behalf of Howard Gilbert for reinstatement to service with compensation for all lost time account Carrier violated the current Signalmen’s Agreement, particularly Rule 701, when on October 22, 1998, it dismissed the Claimant from service without providing him the benefit of a fair and impartial hearing. Carrier’s File No. 15(99-63). General Chairman’s File No. 99-18-PM. BRS File Case No. 11177-C&O-PM).”

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.

Prior to the time this dispute arose, Assistant Signalman H. L. Gilbert (Claimant) transferred from the B&O signal roster to the Pere Marquette signal roster. The Claimant duly reported to the Pere Marquette and was instructed to bid on various jobs as they were bulletined. On October 22, 1998, the Carrier notified the Claimant that, in accordance with the Pere Marquette Signal Agreement, his failure to bid on any job had resulted in the forfeiture of his seniority.

In a March 5, 1999 letter, the Organization submitted a claim on behalf of the Claimant alleging that the Carrier had violated Rule 701 of the Agreement when it removed the Claimant from service without a fair and impartial Hearing. As remedy, the Organization requested that the Claimant be returned to service and compensated for all time lost, including any overtime.

On March 23, 1999, the General Manager Signal Engineering denied the claim, maintaining that when the Claimant transferred from the B&O signal roster to the Pere Marquette signal roster he did not bid on any job, per the Pere Marquette Signal Agreement, thereby forfeiting his employment. The Carrier further maintained that the claim was procedurally defective because the Organization's March 5, 1999 claim was submitted some 134 days following the October 22, 1998 incident upon which it was based.

In a subsequent letter, the Organization restated its claim contending that the Carrier's denial response was procedurally defective because it did not come from the properly designated Carrier Officer on the C&O PM District. According to the General Chairman, the claim was initially submitted to J. T. Orlandi, Signal Engineer CSX, who is the Carrier's designated Officer to receive and respond to claims on the C&O - PM District. Instead, General Manager Signal Engineering N. M. Choat responded to the claim and denied same.

The Organization further contended that the Claimant had placed bids on "several" positions, and furnished bid forms and confirmation sheet indicating same. The General Chairman noted that when the Claimant submitted his September 1 bids, a Supervisor informed him that he would be contacted when a position became available. Therefore, once the Claimant submitted the requisite bids, it was incumbent upon the Carrier to contact the Claimant, according to the Organization.

In these unique circumstances, due in part to the Claimant's naivete as a new employee, and without precedent or prejudice to any future claims, the Carrier is directed to offer the Claimant the opportunity to return to service, premised upon his ability to pass the requisite physical examination. In all other respects the claim is denied.

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 14th day of November, 2001.