Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36043
Docket No. SG-36040
02-3-00-3-163

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Baltimore
(& Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of M. T. Gaver, for assignment to a position in the Central Train Dispatch Center (CTDC) at Jacksonville, Florida and for compensation for any lost wages connected with Carrier's failure to properly assign him to a position in the CTDC in August or early September of 1998, account Carrier violated the current Signalmen's Agreement, particularly Side Letter No. 1, Paragraph 6, of CSXT Labor Agreement No. S-022-88 as modified by CSXT Labor Agreement 15-3-93, when it failed to properly notify the Claimant in writing of the reason(s) he was not selected for a position in CTDC. Carrier File No. 15(99-67). BRS File Case No. 11164-B&O."

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 case concerns itself with the Carrier's right of selection in the assignment of employees to Electronic Signal Specialist positions at the Centralized Train Dispatching Center at Jacksonville, Florida.

Side Letter No. 1 to CSXT Labor Agreement No. S-002-88 dated January 8, 1988 memorializes the Carrier's ". . . right to select from among applicants for such positions. . . ." This right to select is subject to certain terms and conditions that are set forth in the text of the Agreement. The 1988 Agreement was modified in part by CSXT Labor Agreement 15-3-93 (APPENDIX 7) dated January 22, 1993. It is the application of certain terms and conditions of the 1988 Agreement and the 1993 modifications that forms the basis of the instant dispute.

The chronology of events in this dispute is reasonably clear. From the case record, it is apparent that the Claimant was regularly assigned as a Signal Inspector. In August 1998, there were three Electronic Signal Specialist positions available at the Centralized Train Dispatching Center. The Claimant submitted an application for one of the available positions. The Claimant was not selected by the Carrier for assignment to any of the available positions. Rather, a junior employee was assigned to the position that the Claimant sought.

The record is devoid of any correspondence or notification following the filling of the positions. Neither party to the dispute identified the exact date on which the assignments were made effective.

The first item of record is a September 30, 1998 letter from the Claimant to the Chief Engineer Train Control in which he asks why he had not been assigned to the Electronic Signal Specialist position that he had sought. There is no evidence in the case record that the Chief Engineer Train Control ever made any reply to the Claimant's September 30 letter.

The Carrier alleged that the Senior Director Labor Relations, in a letter dated January 22, 1999 to the Claimant, outlined the reasons for not assigning him to the Specialist position. The Organization argued that no such letter was ever received by either the Claimant or the Organization.

We find in the case record a December 17, 1998 letter from the Organization addressed to the Chief Engineer Train Control in which the questions posed by the Claimant in his September 30 letter to the same Carrier Officer are again posed by the Organization. There is no record of any response being made by the Chief Engineer Train Control to the Organization's December 17 letter.

The Carrier alleged that by letter dated January 22, 1999 addressed to the Organization, it in fact, responded to the Claimant's inquiry and attached a copy of its January 22, 1999 letter allegedly addressed to the Claimant.

Finally, by letter dated April 8, 1999 the Organization presented a grievance on behalf of the Claimant. The letter was addressed to the Senior Director Employee Relations, the highest officer designated to handle claims and/or grievances. This "grievance" evolved into a "claim" made by the Organization in its September 30, 1999 letter to the Senior Director Employee Relations. The Organization contended that the Claimant should now be awarded the Electronic Signal Specialist position in question and that he should be paid for any loss of wages.

The case record is devoid of any substantive argument or positions taken by the parties during the on-property handling of this grievance/claim. Before the Board, the Carrier argued that the 1993 modification of the 1988 Agreement in effect nullified its obligation to notify the Claimant or the Organization of the reasons for non-selection for an Electronic Signal Specialist position. It further contended that neither the Claimant nor the Organization had properly presented the claim that the Board is now considering.

Before the Board, the Organization insisted that the Carrier had refused to comply with the notification provisions of the 1988/1993 Agreements and therefore it (the Carrier) was in violation of the Agreement and, on that basis, assignment of the Claimant to the desired position and compensation for those wages was warranted.

The Carrier's argument that the 1993 modification of the 1988 Agreement nullified Section 6 of the 1988 Agreement is just plain wrong. Even a cursory reading of the language of the 1993 modification reflects that:

> "The effect of this modification is to allow the Carrier 'right of selection' in filling these positions, thus nullifying the provisions contained in the

first paragraph of Section 8 of the aforementioned Side Letter #1." (Emphasis added)

Section 8 of the 1988 Agreement contained two separate, meaningful paragraphs. Clearly the second paragraph of Section 8 was not affected by the 1993 modification. Inasmuch as the second paragraph of Section 8 clearly refers to procedures described in Section 6 of the 1988 Agreement and inasmuch as the second paragraph of Section 8 was not modified by CSXT Labor Agreement 15-3-93, Section 6 remained in full force and effect for both the Carrier and the Organization.

Section 6 of the 1988 Agreement reads as follows:

"6. Should such selection by the Carrier result in a junior employee being selected in lieu of a senior employee, the Carrier shall advise the senior employee, if requested in writing, the reasons for such selection, with copy to the respective General Chairman. Should the employee not agree with the Carrier with respect to the Carrier's selection, the Carrier may nevertheless proceed with the assignment based on its selection and the employee, or the General Chairman, shall be privileged to submit a grievance. Any such grievances shall be filed directly with the highest officer of the Carrier designated to handle claims and grievances under the terms and conditions of the Railway Labor Act within sixty (60) days of the assignment of employees to the positions referred to herein and if the parties are unable to expeditiously resolve the grievances within sixty (60) days thereafter, any such grievances shall then be referred within sixty (60) days thereafter, to a neutral party for final adjudication pursuant to the resolution of disputes provisions of the Railway Labor Act. The time limits provided herein may be extended by mutual agreement between the parties."

It is the Board's opinion that this tempest need not have happened. If the Carrier had advised the senior employee of the reasons for his non-selection for the Electronic Signal Specialist position; if the Carrier had given the Organization a copy of its reasons for non-selection of the senior employee; if the Organization had filed its grievance directly with the Carrier's highest designated officer within 60 days of the assignment; if both parties had read and complied with the clear, unambiguous language of Section 6, there would have been no claim.

The bottom line in this dispute is that the Carrier, by Agreement of the parties, has the right to select the employees who are to be assigned to the particular group of positions here involved without regard to seniority. The Board cannot change that right. It was retained by the Carrier pursuant to a mutual Agreement of the parties. While the Board cannot and does not condone the Carrier's cavalier action of failing to follow the clear terms of the negotiated Agreement relative to notification to the parties of the reasons for its selections and/or non-selection, it would be excessive and beyond our authority to require the selection of another employee or to award compensation for not being selected. The Carrier retains that right until the parties to the Agreement choose to amend the Agreement.

Therefore, the claim as presented in this case is denied.

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 21st day of May, 2002.