

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36083
Docket No. SG-36071
02-3-00-3-244

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
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Grievances on behalf of T. R. Maxfield for a seniority date of November 4, 1998 in the Maintainer Classification, account Carrier violated the current Signalmen's Agreement, particularly Rule 12, when effective November 4, 1998, Carrier assigned the position of Maintainer in Gang E-062 at the Pierreville, MW Base to a junior employee. Carrier File No. NEC-BRS(S)-SD-828. General Chairman's File No. JY3264-65-0599. BRS File Case No. 11132-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 30, 1998 protests the Carrier's failure to award the Claimant a Maintainer position in Gang E-062 at Perryville MW Base effective November 4, 1998, and its award of that position to a junior employee, as a violation of Rule 12, which requires that an advertised position be awarded to the senior qualified bidder. It requests that the Claimant's Maintainer classification seniority date be changed to November 4, 1998.

The record reveals that both the Claimant and R. Foura, the junior employee awarded the Maintainer position effective November 4, 1998, were Signal Trainees at the relevant time. The Claimant took the Maintainer's test on September 25, 1998, and failed the written portion. In accordance with C&S Department policy, as revised August 16, 1993, employees who fail promotional examinations are ineligible for reexamination for 45-days. The Maintainer position in dispute was advertised on October 13, 1998, and both the Claimant and Foura applied for it. Foura was given and passed the Maintainer's test on November 2, 1998, and was awarded the position effective November 4, 1998. The Claimant subsequently passed the Maintainer's examination, was awarded a Maintainer position, and established seniority in that classification on December 21, 1998.

The Organization argues that the Carrier violated the Claimant's seniority rights under Rule 12 when it gave Foura, a junior trainee, the opportunity to qualify for the Maintainer position on Gang E-062, and denied the Claimant's rights as the senior applicant. The Carrier contends that there was no violation of Rule 12(a), because it requires that advertised positions be awarded to the senior qualified bidder, and the Claimant was not qualified as a Maintainer at the time of the advertisement or award. It asserts that the Claimant was given the opportunity to qualify as a Maintainer on September 25, 1998, but failed the exam, and could not retake it for 45-days in accord with established policy. The Carrier argues that the Claimant was given a Maintainer position and established seniority in that classification as soon as he was able to demonstrate his qualifications by passing the required examination. It contends that Third Division Award 25681 is res judicata to the issue presented in this case.

A careful review of the record convinces the Board that the Organization failed to establish any violation of Rule 12 or that the Claimant was entitled to an earlier seniority date within the Maintainer classification. There is no dispute that the Claimant was given the opportunity to qualify for the Maintainer classification on September 25, 1998, but that he failed to pass the required examination. The

Organization presented no evidence contesting the existence of the C&S Department policy making employees who fail promotional examinations ineligible for reexamination for 45-days. The proper application of that policy made the Claimant ineligible for retesting until after the Maintainer position in dispute was advertised and awarded. Under Rule 12, the Claimant's seniority rights only apply once it has been established that he is qualified to fill the bulletined position. Third Division Award 35754. The Claimant was clearly not qualified for a Maintainer position as of November 4, 1998. Accordingly, the Carrier's award of the bulletined position to Foura as the senior qualified bidder was in accord with Rule 12, and the Claimant's entitlement to a November 4, 1998 Maintainer classification has not been established. See Third Division Award 25681.

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 18th day of June, 2002.