

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
—THIRD DIVISION**

Award No. 37532
Docket No. SG-37267
05-3-02-3-167

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of T. R. Hobbs, for all expenses incurred, benefits lost and payment of the difference between his current rate of pay and that of Signal Inspector commencing on January 22, 2001, and continuing until this violation ceases, account Carrier violated the current Signalmen's Agreement, particularly Rules 58, 64 and 80 when it abolished the Claimant's position and then refused to let him displace the junior employee of his choice. Carrier's File No. 1258246. General Chairman's File No. N-58-142. BRS File Case No. 11917-UP.”

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.

Claimant T. R. Hobbs has worked as a Signal Maintainer for the Carrier since 1970. In July 2000, the Claimant was placed on a leave of absence for medical reasons. During the Claimant's leave of absence, his Signal Maintainer position at South Pekin, Illinois, was abolished. On or about January 28, 2001, he was cleared to return to work.

When the Claimant returned to work, he notified the Carrier that he wished to displace to a Signal Inspector position on Gang 2067. An employee junior to him held this position. The Claimant had never worked as a Signal Inspector.

The Claimant's manager did not believe that he had the ability to perform the duties of a Signal Inspector so he declined the Claimant's request to displace to a Signal Inspector position on Gang 2067. The principal duties of a Signal Inspector are to inspect and test systems, appurtenances and appliances covered by the Agreement and to make relay and other inspections and tests as required by the Carrier. The Claimant's manager offered to allow him to take a test to determine his fitness and ability to perform the duties of a Signal Inspector, but he declined the offer.

On January 25, 2001, the Organization requested the Carrier to afford the Claimant an Unjust Treatment Hearing in accordance with Rule 70 of the Agreement. Rule 70 provides, in pertinent part, that "An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 68 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. . . ."

On January 29, 2001, the Carrier denied the Organization's request for an Unjust Treatment Hearing. According to the Carrier, Rule 70 only applies when an employee's purported unjust treatment is not covered by the Schedule Rules. The Carrier maintains that Rule 1, NOTE (a) of the Agreement was applicable to the Claimant because the Schedule Rule granted him the right to request a standard practical test to demonstrate his fitness and ability to be assigned a Signal Inspector's position. If he passed the test, he would have been assigned to a Signal

Inspector's position on Gang 2067 and the junior employee would revert to his/her former position.

On May 23, 2001, the Carrier left open its offer to allow the Claimant to take a test to demonstrate his fitness and ability to be assigned to a Signal Inspector's position. The Claimant never accepted the offer. Rather, he displaced to a position on a Zone Gang.

On February 19, 2001, the Organization filed a claim on behalf of the Claimant contending that the Carrier violated Rule 58.E of the Agreement when it refused to allow him to displace a junior employee on or about January 22, 2001.

The Carrier denied the claim asserting that the Claimant was held off of the Signal Inspector's position in accordance with Rule 1 NOTE (a) of the Agreement because his manager determined that he lacked the ability to hold a Signal Inspector's position.

The claim was appealed on the property but could be resolved.

Notwithstanding the Organization's contention, the Board finds that the Claimant was not entitled to an Unjust Treatment Hearing as provided in Rule 70 when he was not allowed to displace a junior employee in a Signal Inspector position. Rule 70 allows an employee who considers himself unjustly treated, an Unjust Treatment Hearing unless his complaint is covered under the Signalmen's Rules. Two specific Schedule Rules were applicable to the Claimant - Rule 1 - Seniority Class 1 and Rule 58 - Displacements. Therefore, he was not eligible for an Unjust Treatment Hearing pursuant to Rule 70.

Management, of course, has the right to determine that employees possess the requisite fitness and ability for positions to which they wish to exercise their seniority. This is an inherent managerial prerogative. Pursuant to NOTE (a) to Rule 1, if a senior applicant for one of the positions enumerated therein is not assigned, and the position is assigned to a junior employee, the senior employee has the right to be given a standard practical test to determine if he/she can demonstrate his/her fitness and ability to be assigned to the position. If the senior employee

passes the test, he/she will be given the position and the junior employee will revert to his/her former position.

Signal Inspector is one of the positions included in Rule 1 - NOTE (a). Contrary to the Organization's contention, this contractual provision applies to displacements as well as to permanent positions that are bulletined. Several times, the Carrier offered to allow the Claimant to take a test to demonstrate his fitness and ability as a Signal Inspector. Inasmuch as the Claimant had never worked as a Signal Inspector, this was not an arbitrary or unreasonable determination. The Carrier left the offer open, but the Claimant never availed himself of it. Accordingly, he is not entitled to the Signal Inspector's rate of pay. The claim is denied for all of the foregoing reasons.

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 23rd day of June 2005.