

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37544
Docket No. SG-36603
05-3-01-3-87

The Third Division consisted of the regular members and in addition Referee James E. Conway 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 Railroad Company:

Claim on behalf of R. R. Sandoval, Jr. for payment of the difference between the rate of pay of Signalman and that of Electronic Technician (ET) (straight time pay for all regularly assigned hours and overtime rates, at the appropriate rate, for all service performed outside of regular assigned hours) beginning on December 7, 1999 and continuing until the violation ceases. Additionally the claim is for Article XII, benefits and for the Claimant to be allowed to displace ET M. L. Hughes. Account Carrier violated the current Signalmen's Agreement, particularly Rule 58 when on December 7, 1999, it refused to allow the Claimant to displace a junior employee. Carrier File No. 1221565. General Chairman's File No. W-58-010. BRS File Case No. 11470-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 R. R. Sandoval challenges the Carrier's disallowance of his attempt to exercise his seniority displacement rights over a junior employee after he was bumped from his position as Signal Maintainer at LaGrande, Oregon.

The dispositive facts are not at issue. On December 7, 1999, the Claimant, whose seniority dated to September 1994, was displaced from his position by a senior employee. On the same date he attempted to exercise his displacement rights over employee M. I. Hughes who was junior to him but held an Electronic Technician's position within class 1. When advised by Signal Manager Shaffer that he was not qualified to hold the Electronic Technician's position, the Claimant offered to take any tests or fulfill any requirements the Carrier might insist upon in order to displace. When that offer was declined the Organization submitted this claim on his behalf asserting violation of Rule 58(a). That provision reads as follows:

"When force is reduced or positions abolished, an employee affected may, within five (5) calendar days from date of displacement (or if displaced while on vacation or leave of absence, within five (5) calendar days from date of return), displace any employee his junior of the same seniority class."

The Carrier argues that in prosecuting this claim the Organization conveniently overlooked the terms of Rule 1, Note (a), which states:

"Positions of signal inspector, signal foreman, signal shop foreman, assistant signal foreman, assistant signal shop foreman, retarder yard maintainer and electronic technician will be bulletined and appointments made with due consideration for seniority, fitness and ability, the management to be the judge. In the event a senior

applicant for a bulletined permanent position is not assigned, and the position is assigned to a junior employee, the senior applicant will, upon written request by the General Chairman to an officer designated by the Carrier within ten (10) calendar days of date of assignment notice, be given a standard practical, oral and written test conducted jointly by the Carrier and the General Chairman to determine if the individual can demonstrate fitness and ability to be assigned to the position. Such test will be given within ten (10) working days, unless extended by mutual agreement after request is made therefor. If the senior applicant passes the test, the employee will be assigned to the position and the junior assigned employee will revert to the position formerly held."

The Electronic Technician position held by Hughes and into which the Claimant desired to move is plainly covered by the above provisions. Because those terms are specific in nature they hold sway over the more generalized displacement terms set forth in Rule 58.

On the date the Claimant sought to displace Electronic Technician Hughes, management made the judgment call that he lacked the requisite fitness and ability to perform the functions of that job. The record evidence amply supports that determination - to hold an ET position the candidate must possess an NARTI radio license or pass a basic reading and math skills test and be enrolled in a program to acquire the requisite license. The record reflects, however, that on July 1, 1998 the Claimant was unsuccessful in his efforts to even pass the required examination to enter the training class preparing him to obtain the FCC license required.

Based upon the foregoing, the Board concludes that the Carrier did not violate the Agreement by rejecting the Claimant's attempt to displace an Electronic Technician.

AWARD

Claim denied.

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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 20th day of July 2005.