

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37633
Docket No. SG-38073
05-3-03-3-478

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:

Claim on behalf of J. D. Wyatt, for placement onto the Signal Inspector position she applied for; compensation at the Signal Inspector rate of pay, and any lost overtime that may have occurred from the date of the assignments of Bulletin No. 14 (ASSIGN1402), also payment of \$20.00 for each day the Claimant was not placed on the assignment she applied for, account Carrier violated the current Signalmen's Agreement, particularly Rule 52, 53 and 55, when on July 12, 2002, the Claimant was not assigned to the Signal Inspector position that she applied for. This is a continuing claim until the Claimant is assigned to the Signal Inspector's position. Carrier compounded this violation when it violated Rule 69 by failing to disallow the claim within the time limits required in the Rule. Carrier's File NO. 1340936. General Chairman's File NO. N 52 53-276. BRS File Case NO. 12758-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 J. D. Wyatt has a seniority date of February 4, 2000. She worked as an Assistant Signalman. In July 2002, when this dispute arose, the Claimant had approximately two and one-half years of experience in the Signal Department. Her Supervisor was J. O'Connor, Manager of Signal Maintenance.

On July 7, 2002, the Carrier bulletined a Signal Inspector open position on Signal Gang No. 3747, headquartered at West Chicago, Illinois. Signal Inspectors are responsible for inspecting and testing signal systems, appurtenances and appliances. They also make relay and other inspection tests; and repair, replace and adjust signal systems in connection with their duties.

The Claimant and one other employee applied for the Signal Inspector vacancy on Signal Gang No. 3747. The Claimant was the senior bidder. On July 12, 2002, the Carrier stated that no qualified bids were received for the vacancy. Management concluded that neither employee who applied for the position was qualified to work as a Signal Inspector. Therefore, the vacancy was not filled.

On August 7, 2002, the Organization filed a continuing claim on behalf of the Claimant. It was the Organization's position that the Carrier violated Rule 52 (Assigning Positions) and Rule 53 (Assignments to New Positions or Vacancies) when it did not assign the Claimant to the Signal Inspector position on Signal Gang 3747. The Organization contends that the Claimant was the senior qualified applicant for the vacancy and therefore should have been awarded it.

On October 1, 2002, the Carrier denied the appeal. It was the Carrier's position that Rule 1-Seniority Class One-Note: (a) of the Agreement allows management to be the judge of an applicant's fitness and ability when appointments

are made to Signal Inspector positions. According to the Carrier, the Claimant's supervisor during her two and one-half years of service in the Signal Department concluded that she was not qualified to be a Signal Inspector on Gang No. 3747 because this signal gang worked in a congested area with high freight traffic and busy commuter operations.

The Carrier's October 1, 2002 denial was mistakenly mailed to the General Chairman's former address in Illinois. On or about November 20, 2002, the Carrier became aware of this error and mailed the denial to the General Chairman's new address in Illinois. The claim was appealed on the property, but could not be resolved.

Rule 69 of the Agreement between the parties requires the Carrier to notify whoever filed the claim (the employee or his representatives) in writing of the reasons for disallowing the claim within 60 days from the date the claim was filed. If not so notified, the claim will be allowed as presented.

On August 7, 2002, the Claimant's representative filed this claim on her behalf. On October 1, 2002, 54 days later, the Carrier notified the representative who filed the claim of the reasons why the claim was disallowed. However, the Claimant's representative had moved his office without informing the Carrier and the disallowance was mailed to the representative's address on file with the Carrier. It was the Claimant's representative who was responsible for this miscommunication, in the opinion of the Board, by failing to notify the Carrier of the change in his address. The Carrier complied with the time limits prescribed by Rule 69 by notifying the Claimant's representative in writing of the reasons for disallowance of the claim within the requisite 60 days. Therefore, the claim will not be allowed as presented.

Rule 52 requires seniority to govern when the Carrier fills vacancies or new positions, provided that the senior employee's ability to do the job is sufficient. The Organization has not submitted substantial evidence that the Claimant possessed sufficient ability to perform the Signal Inspector's job on Signal Gang No. 3747 headquartered at West Chicago, Illinois.

Due to substantial freight traffic and busy commuter operations on this territory, the Claimant's supervisor during her two and one-half years of employment in the Signal Department determined that she was not qualified to work as a Signal Inspector in the West Chicago area. That determination was predicated on the Claimant's lack of experience. It was not an arbitrary, capricious or unreasonable decision, in the Board's opinion. Therefore, the Carrier did not abuse the discretion granted it by Rule 1 to be the judge of an employee's fitness and ability for the position of Signal Inspector. The claim is denied as a result.

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 19th day of October 2005.