

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37708
Docket No. SG-37561
06-3-02-3-651**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KSC):

Claim on behalf of T. D. Bengé, Jr., D. J. Hamilton, J. C. Timmons, M. S. May, W. C. Shepard, D. J. Horner, T. L. Parker, T. N. McBroom, T. A. Terry, J. Rosine, R. Dickey, G. L. Peace, M. R. Allen, J. W. Smith, Jr., W. C. Bickham, Jr., R. H. Thornton, S. L. Blunt, M. L. Kelley and K. P. Simmons, for the difference in the rate of pay between Assistant Signalman and Signalman commencing 60 days prior to this claim and continuing until this dispute is resolved account Carrier violated the current Signalmen’s Agreement, particularly Rules 27, 29 and 44, when it promoted three Assistant Signalmen who were junior to the Claimants and denied the Claimants promotion to a Signalman’s position on April 10, 2001. Carrier’s File No. K06015546. General Chairman’s File No. 01-095-KCS-185. BRS File Case No. 12253-KCS.”

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.

The Board must note that there are two claims before it with essentially the same facts. Both the instant claim and that contained in Third Division Award 37709 have the same Claimants and allege the same facts and issues. The allegation presented in this claim is that when the Organization received the seniority rosters, it found that the Carrier had promoted three Assistant Signalmen to Signalman positions. Those three employees (A. Gore, J. Posey and B. Posey) were hired on April 9, 2001 and given Signalman dates the very next day. The Organization alleges that the Carrier violated Rules 27, 29 and 44, because 19 Assistant Signalmen were not promoted to Signalman's positions on April 10, 2001.

The second claim (Third Division Award 37709) alleges a violation of Rule 31. It alleges that when the Carrier revised the seniority roster, the 19 Claimants, all of whom were hired prior to A. Gore, J. Posey and B. Posey were not promoted to Signalmen on April 9, 2001, while the three new hires were promoted on April 10, 2001.

The Organization's on-property argument involves different Rules for the two claims, but focuses on the same facts and issues. It maintains that the Carrier was well aware that the three new hires were qualified Signalmen. The Organization argues that the Carrier brought them onto the property as Assistant Signalmen to run around the Agreement and the Organization. At various times it accuses the Carrier of "a back door deal/promise" to get the three new hires to work for the Carrier. Article VII, Section 3 of the Local Bylaws states that:

"Initiation fee for membership in this Local shall be \$150.00.
Membership fee for persons whose entry rate is Signalman or above shall be \$1,000.00 except those persons holding membership cards

and are in good standing with the Brotherhood of Railroad Signalmen.”

The Organization argued on the property that the Carrier permitted fully qualified Signalmen to gain employment as Assistant Signalmen to avoid payment of the \$1,000.00 fee. It argues a clear violation of the Agreement Rules. In this claim, the Organization argues that the three new hires were ineligible to bid on positions as per Rule 44 because they were Assistant Signalmen. The Carrier therefore violated Rule 29(d) in arguing that there were no other qualified bidders. The new hires were not eligible to bid and the 19 Assistant Signalmen were not permitted to bid. Additionally, Rule 27 requires new hires to be probationary Assistant Signalmen for 60 days. The Organization is adamant that the Carrier circumvented the Local's bylaws as well as violated the Agreement.

Importantly, in the second claim (Third Division Award 37709) the facts and arguments are the same, except that the violation is alleged to be the Agreement and particularly Rule 31, in failing to properly issue a correct seniority roster. A sustaining Award in the instant case promoting the 19 Assistant Signalmen would make the issue of a new seniority roster in the second claim moot. Two different Awards would be unthinkable as each would contradict the other. Or, if a denial were issued in this case, the new seniority roster requested in the second claim would not be required. The two claims are inextricably linked.

The Carrier denies any Rule violation in the instant claim. The three individuals were hired as Assistant Signalmen. The jobs they were assigned to were bulletined properly in accordance with Rule 44. There were no other qualified bidders and a review of the employments records of A. Gore, J. Posey and B. Posey indicated that they had years of railroad experience working as a railroad signal contractor for Posey Signal. Hence, they were properly promoted and assigned. The Carrier argues that this was not arbitrary. The 19 Claimants were not promoted because they were not qualified.

The Board will go no further with the Carrier's denials. They are without foundation. This is a split claim. It is duplicative of all the arguments, issues and Claimants. In this instance, the Organization seeks a decision that would be sought again under the second claim before us. The Board has consistently ruled for many

years that it cannot consider a bifurcate claim. Third Division Award 20714 directly pointed to the Board's requirement to dismiss a claim under such circumstances and quoted therein from First Division Award 6334, which stated:

"The question is whether the same controversy may be brought to this Division piecemeal, a practice which would seem not to be contemplated by the provision of Section 3 (m) of the Railway Labor Act, and which is neither fair to the parties nor proper practice if the Division is to function efficiently. . . ."

The Board concludes that the claim was impermissibly split. The merits cannot be reached. It is apparent that a sharp practice by the Carrier initiated this dispute and had we reached the merits, we would have found such. However, under the conditions herein before us, the claim must be dismissed.

AWARD

Claim dismissed.

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 30th day of January 2006.