

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39142
Docket No. SG-38467
08-3-NRAB-00003-040433
(04-3-433)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe:

Claim on behalf of G. F. Moore, for placement or assignment to the Signalman position on Mobile Crew 16, and necessary corrections made to seniority lists, account Carrier violated the current Signalman’s Agreement, particularly, Rule 41H when the Claimant was denied the opportunity to transfer to another Division and when Carrier improperly awarded a junior employee the position of Signalman on Mobile Crew 16 found in Bulletin #03-325. Carrier’s File No. 35 03 0080. General Chairman’s File No. 03-099-BNSF-129-S. BRS File Case No. 13005-BNSF.”

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.

In 2001, the Claimant was assigned to a Signalman's position on the Kansas Seniority District. On August 18, 2001, the Claimant bid on the Signalman position on Crew 002 on the Springfield Seniority District, advertised in Bulletin No. 00-38S. On August 27, 2001, the Carrier closed out the Bulletin asserting that there were "no qualified bidders." On January 2, 2002, the Carrier allowed the Claimant to transfer to the Springfield District to that Signalman position. The Claimant acquired a Class 1 seniority date on the Springfield Seniority District as of January 2, 2002.

In the meantime, on September 10, 2001, the Carrier hired eight new Assistant Signalmen on the Springfield Seniority District. In October 2003, the Carrier advertised in Bulletin No. 03-325 a Signalman position on Crew 16 in the Springfield Seniority District. Although the Claimant sought the position, it was awarded to one of the eight Assistant Signalmen hired in September 2001, who had acquired a Class 1 seniority date on the Springfield Seniority District as of September 10, 2001.

The Organization contends that the Carrier violated Rule 41H of the Agreement in October 2003 by awarding the position on Crew 16 to a junior employee instead of the Claimant.

Rule 22B states that "Seniority begins at the time an employee's pay starts in the seniority class and district in which employed." As of October 2003, the Claimant was not the most senior applicant for the Crew 16 position. Although the Claimant had acquired Class 1 and Class 2 seniority on the Springfield District on January 2, 2002, the successful bidder had a Class 1 and Class 2 seniority date of September 12, 2001, having acquired backdated Class 1 seniority upon completion of his two year training program on September 10, 2003. Thus, pursuant to Rule 22B, the Claimant's relevant seniority on the Springfield Seniority District was less than that of the successful bidder.

Rule 41H, cited by the Organization, provides that "If there are no qualified applicants, including an employee who has completed a sufficient part of the training program, and no applicants for transfer from other seniority districts such position may be filled by the Carrier from such source of supply as it deems proper." In effect, the Organization is challenging the Carrier's failure to assign the Claimant to the Tulsa Signalman position advertised in August 2001, and its closure of that assignment bulletin due to "No Qualified Bidders." If there was any violation of Rule 41H, it occurred then, in August 2001. The time for challenging the Carrier's August 2001 actions or the seniority list subsequently issued in January 2002 expired long before this claim was filed in October 2003. Thus the request for changes to the seniority list is denied as untimely.

Because the Claimant was not the senior applicant in October 2003, the Board finds that the Carrier's award of the position in Bulletin No. 03-325 to another employee did not violate the Agreement.

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 7th day of July 2008.