

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39664
Docket No. SG-40497
09-3-NRAB-00003-080343**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Louisville & Nashville):

Claim on behalf of G. L. Muse, for the Signal Foreman’s position awarded to the Claimant on May 2, 2006 to be advertised as a permanent position, account Carrier violated the current Signalmen’s Agreement, particularly Rules 37, 46 and 66, when it assigned another employee to a Supervisor’s position outside of the Collective Bargaining Agreement and advertised the vacated position as temporary instead of permanent. Carrier’s File No. 15(07-0005). General Chairman’s File No. 06-SYS-10. BRS File Case No. 13868-L&N.”

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 instant claim arose due to the illness of Engineer Signal Construction R. D. Lemaster. BRS-represented Signal Foreman R. D. Price was temporarily promoted to fill the supervisor's position. Because the expected duration of the supervisor's illness was unknown at the time, the Signal Foreman position on 7HX9, which Price vacated when he was promoted to the supervisory position, was advertised as a temporary position. The Claimant bid on and was awarded the temporary position. Price was eventually released from the supervisory position and displaced the Claimant on September 2, 2006 pursuant to the exercise of seniority right provided by Rule 37.

The Organization contends, first, that Price's vacancy should have been advertised as a permanent position and, second, if it had been awarded to the Claimant permanently, then Price could not have displaced the Claimant. To the contrary, the Carrier contends that it was not required to advertise the vacancy as a permanent position. In addition, the Carrier contends that Price, who was senior to the Claimant, could have displaced the Claimant regardless of whether the Claimant was on a permanent or temporary position.

Needless to say, the record before the Board is quite unique and raises a highly technical issue of Agreement application. Based on our careful review of the record, we are compelled to find that a violation of the Agreement has not been established. Therefore, the claim must be denied.

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 22nd day of April 2009.

Organization's Dissenting Opinion

Third Division Award No. 39664
Docket No. SG - 40497

Brotherhood of Railroad Signalmen
V.
CSX Transportation, Inc.

As noted the majority held that this case was somehow "...unique and raises a highly technical issue of Agreement application." The record indicated that Mr. Price was temporarily promoted to fill a supervisor's position. As a result the Carrier placed his vacated position as a temporary position. The problem with Carrier's actions is that once Mr. Price obtained a management position – temporary or not – he was not covered by the Agreement and his former position should not have been held open for him to return.

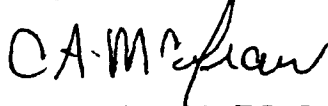
The Carrier argued that his former position was being held by a junior employee and Mr. Price could have displaced the Claimant regardless of whether the Claimant was on a permanent or temporary position. In a nut shell, Carrier argued 'no harm no foul'. The problem with this logic is that once Mr. Price assumed a management position his only rights upon returning to the craft would be to displace a junior employee. He has no rights to simply return to his former position.

The dilemma in accepting this logic could result in a situation where his temporary position was being held by a senior employee. In that case the Claimant could not simply return to his former position. The rationale for advertising these vacancies as permanent is simple and straight forward. It assures that employees holding management positions have no superior rights other than those emanating from the Agreement.

While the majority correctly held that the remedy in this instant case is moot, the fact is that the Agreement was violated.

Based on the foregoing the Organization takes exception to Carrier's 'no harm no foul' attitude to a clear violation of the Agreement.

Respectfully, Submitted.



C.A. McGraw, BofRS - Labor Member
National Railroad Adjustment Board