

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40354
Docket No. SG-39841
10-3-NRAB-00003-070009
(07-3-9)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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:

Claim on behalf of R. J. Colvin, for the difference between the Signalman's rate of pay and the Signal Foreman's rate of pay for 60 hours' straight time and 8 hours' overtime in addition to the compensation he received, account Carrier violated the current Signalmen's Agreement, particularly Rule 26, when it used a junior employee instead of the Claimant to relieve the Signal Foreman's position from September 29, 2005 through October 4, 2005, causing a loss of work opportunity for the Claimant. Carrier's File No. 1438100. General Chairman's File No S-26-754. BRS File Case No. 13696-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.

At the time of the incident giving rise to this dispute, Claimant R. J. Colvin was assigned to the position of Signalman on Gang 4528. During the period of September 29 through October 4, 2005, the regularly assigned Signal Foreman of Gang 4528 took his vacation. During his absence, the ARASA Supervisor assigned an employee junior to the Claimant to serve as a temporary Foreman for the Gang.

The Organization filed the above claim on November 28, 2005. In its claim the Organization asserted that the Claimant should have been assigned to relieve the Foreman's position in accordance with Rule 26 – Relieving Foremen and Maintainers – of the Parties' Agreement. The Organization maintained that not only was the Claimant senior to the employee assigned, but he had also "taken all the training classes that the Carrier has required of him."

Rule 26 reads, in pertinent part, as follows:

"When Signal Gang Foremen are off during vacation periods, or for other reasons, they will be relieved by the Assistant Signal Foreman or lead Signalman assigned to that gang, if available. If not available, they will be relieved by the senior qualified employee in class 1 assigned to the Signal Gang."

The Organization protested that the ARASA Supervisor did not state a reason why the Claimant was not qualified to relieve the Foreman's position. It pointed out that the Claimant had as much training as the junior employee assigned and, as the more senior employee, had more work experience than the employee chosen.

The Carrier denied the Organization's claim in a letter dated January 18, 2006. In its denial, the Carrier noted that the Signal Supervisor had observed the Claimant and had engaged in discussions with the Claimant's Foreman before the latter took his vacation. The Carrier stated that the consensus of the Signal Supervisor and the Foreman was that the Claimant lacked sufficient fitness and ability to assume the supervisory role and the leadership responsibilities of the Signal Foreman. Further, the Carrier pointed out, it has the right to determine fitness and ability and has an obligation to assure that an employee placed in such a position, even temporarily, is duly qualified.

The Board reviewed the correspondence and other on-property documentary evidence presented. We concur with the Carrier that it has the right under the Agreement to be the final judge of fitness and ability, absent an arbitrary or discriminatory determination. In the present case, we do not find that the Organization demonstrated that the Carrier was incorrect in its decision to bypass the Claimant in favor of a junior employee with respect to the temporary assignment as Signal Foreman. However, as has been noted previously by the Board, it is useful to the unsuccessful employee to be given full and accurate information regarding the grounds for the Carrier's determination that he or she is not qualified for a position. (See Third Division Award 40351).

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 1st day of March 2010.