

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40472
Docket No. SG-39974
10-3-NRAB-00003-070169
(07-3-169)

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 M. L. Peace, for the difference in pay between the Signal Foreman’s rate and the Signaller’s rate for all hours worked starting January 29, 2006 and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when it assigned a junior employee instead of the Claimant to the Signal Foreman’s position on Gang #2695. Carrier’s File No. 1442929. General Chairman’s File No. N 52 617. BRS File Case No. 13745-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 this dispute arose, Claimant M. L. Peace was assigned to a Signalman position on Gang 2686. On January 29, 2006, the Claimant bid on Bulletin No. 948, Signal Foreman, Gang No. 2695 at Eagle, Colorado. The position was not assigned to the Claimant; rather it was assigned to M. A. Stecki.

By letter of February 15, 2006, the Organization filed a claim on Peace's behalf. It maintained that the Claimant's seniority was greater than Stecki's and, therefore, the Claimant was wrongfully denied the position in question. The Carrier denied the Organization's claim on March 28, 2006. It asserted that Stecki was not junior to the Claimant and attached personnel records for both men.

The Organization appealed the Carrier's denial by letter of April 12, 2006. In its appeal, the Organization pointed out that the Claimant's earliest continuous seniority date in the Signal Department was August 30, 1976, while the earliest continuous seniority date for Stecki was December 6, 2007. The Organization further contended that pursuant to the Side Letter dated May 5, 2004, employees were permitted to bid on zone gang positions relying on their earliest continuous dates; and under that letter, the Claimant had greater seniority than Stecki and should have been awarded the position.

In its June 9, 2006 reply to the Organization's appeal the Carrier contended that the Organization had misread the provisions of the May 5, 2004 Side Letter. It quoted the second paragraph of the letter as follows:

"The system seniority roster was originally created because employees from different collective bargaining agreements were given the right to bid to positions in various shops. It was recognized that the consolidation of all signal employees under a single collective bargaining agreement eliminated the need for a system seniority roster. It therefore was agreed that effective July 1, 2004, the system seniority roster will be eliminated and zone rosters created that reflect the same information that is presently provided for employees on the system roster, which is their earliest continuous

seniority date in the signal department. Thereafter employees bidding to positions that previously required the use of the system seniority roster or to zone positions on their respective zone will bid using their zone roster date.”

The Carrier contended that the Claimant’s seniority date as a Signalman on the zone roster was nearly one month later than Stecki’s – May 4, 1979 for the Claimant vs. April 16, 1979 for Stecki. The Carrier insisted that it had complied with the agreement language in Rule 52 because each man had established a zone 1 roster date for the Signalman position. It asserted that it was the zone roster date for the Signalman position, not the seniority dates for their respective Assistant Signalmen positions (in which the Claimant had an earlier seniority date than Stecki) that should be applied in awarding the Signal Foreman position.

The Board carefully reviewed the record. It is not surprising that the Parties’ interpretations of the May 5, 2004 Side Letter are in diametric opposition. The language of the letter is not clear. Nor do the documents relating to each man’s employee record provide any clarification. The Claimant’s “date of service” is listed on his record as May 23, 1976. His “Signal Zone 1” seniority date as an Assistant Signalman is listed as August 30, 1976, and his “Signal Zone 1” seniority date as a Signalman is listed as May 4, 1979. Stecki’s “date of service” on his employment record is listed as December 6, 1977. His “Signal Zone 1” seniority date as an Assistant Signalman is also listed as December 6, 1977 (identical to his date of service) and his “Signal Zone 1” seniority date as a Signalman is listed as April 16, 1979.

Neither Party presented any evidence explaining why there are different “Signal Zone 1” seniority dates for each man’s service as an Assistant Signalman as opposed to his service as a Signalman. Nor is there any indication in the record of how this somewhat Byzantine system has been applied in the past. The Organization had the burden of providing the needed clarification in this case. It did not meet that burden. Accordingly, the Board finds that the instant claim must be denied on the basis of failure of proof.

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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 14th day of May 2010.