

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 40476  
Docket No. SG-40071  
10-3-NRAB-00003-070266  
(07-2-266)

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 N. A. Clark, for a Class 1 seniority date of March 6, 2006 and the difference in pay between the Claimant's rate and a Signal Maintainer's rate of pay plus any overtime pay compensation that the Claimant missed starting March 6, 2006 and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 16, 40, 51 and 80, when it awarded the Claimant a Signal Maintainer's position on Bulletin No. 811 and failed to allow him to assume this position. Carrier compounded this violation by failing to respond to the Organization's appeal within the 60-day time limit provisions of Rule 69. Carrier's File No. 1446622. General Chairman's File No. UPGCW-75-1236. BRS File Case No. 13738-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.

The essential events leading to this claim are not in dispute. On March 6, 2006, Claimant N. A. Clark was awarded a position of Signal Maintainer on Roster 4506 headquartered at Hinkle, Oregon. He was subsequently notified that he had been assigned the position in error and was returned to his original position of Assistant Signalman. The Organization filed a claim on his behalf on April 6, 2006. In that claim, the Organization protested that the Carrier had violated the Agreement when it failed to retain the Claimant on the position of Signal Maintainer and requested that he be shown with a temporary Class 1 date beginning on March 6, 2006, and given the difference between the Signal Maintainer's rate of pay and any lower rated position that he might work until resolution of the claim.

The Carrier denied the claim by letter of June 1, 2006. In its letter, the Carrier contended that the Claimant had been assigned to the position in error, the error had subsequently been corrected and he was returned to his former Assistant Signalman position. The Organization's June 7, 2006 appeal disputed the Carrier's assertion of an "error" in assigning the Claimant and contended that there had been no showing that he was not qualified to assume the position for which he had bid.

The Carrier denied the Organization's appeal on August 8, 2006. In response to the Organization's contention that there was no reason for the Claimant's disqualification from the position of Signal Maintainer, it pointed out that the Claimant had less than one year of service and had not completed the training program. It further pointed out that Rule 40 obligated the Carrier to promote a Signal Employee to a Class One position only if he or she had either two years of service, or had completed the training program.

In sum, the Carrier argued that the Claimant did not possess the “fundamental skills” required to operate independently as a Signal Maintainer. It insists that it has the right and responsibility to determine whether any candidate for a position has the requisite skills and ability to occupy a particular position. In this case, the Carrier contends, it determined that the Claimant did not have either the skills or the ability, and was, therefore, justified in re-assigning the Claimant to his former position as Assistant Signalman.

The Board has reviewed the record in this case thoroughly. We do not find that the Carrier’s determination of the Claimant’s lack of fitness for the position of Signal Maintainer was either unreasonable or in violation of the Parties’ Agreement. The Organization failed to prove that the Claimant did, in fact, possess the necessary qualifications. We do not find that the Carrier should be penalized – or the public and fellow employees placed in jeopardy – for what apparently was a genuine clerical error on its part. Accordingly, the claim is denied in its entirety.

**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.