

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: 1. That Warren Harding Allen be assigned position of Leading Signaller, construction force, Ashland Division, instead of Lionel Glasscock, a junior employe in point of seniority.

2. That Warren Harding Allen be paid the difference between the rate of Signaller and that of Leading Signaller or 5 cents per hour from May 28, 1945, until such time as he is actually placed on the Leading Signaller's position.

JOINT STATEMENT OF FACTS: Rule 43 (d) provides:

"When construction work is carried out on any seniority district, the vacancies or new positions will be bulletined to the seniority district on which the work is to be performed. Men holding seniority on that district will have first right to such positions or vacancies, and if promoted to higher classes in such work by bulletin under Rule 52, seniority in the higher class will be established under the provisions of Rule 33 (b). If all positions for the construction work are not filled by men on the seniority district, a circular letter will then be prepared by the Supervisor of Signal Construction or other corresponding officer and distributed to all concerned on all other seniority districts, indicating the positions remaining unfilled. The circular letter will indicate a ten-day period in which men on other seniority districts (working or laid off) may make application for work on such positions. Men working may make application for positions only in a class or classes higher than that in which they are working on the home district. Men laid off may make application for positions in any class. Men at work or laid off, from other districts, will be assigned to the positions remaining unfilled in accordance with seniority in the class on home districts. When positions have been filled in this manner, a circular letter will be distributed on all seniority districts showing employes assigned. A copy of the circular letters will be sent to the General Chairman."

A position as leading signaller in construction work on the Ashland Division was bulletined in the manner provided by Rule 43.

W. H. Allen employed on the Huntington Division as Assistant Signaller with seniority date of February 2, 1944, made application for the position. Lionel Glasscock employed on the Cincinnati Division as helper with seniority date as helper from January 27, 1942, also made application for the position.

position. It did, on the other hand, show its good faith in giving Allen chance to qualify as signalman in the construction work, where he could work under the guidance and direction of a qualified leading man, despite the fact that he had not had four years training as contemplated by Rule 5.

The employes in handling this case with the carrier have taken an extreme point of view. Rule 43 (d) provides:

“ . . . Men at work or laid off, from other districts, will be assigned to the positions remaining unfilled in accordance with **seniority in the class on home districts. . .**” (Emphasis supplied.)

The employes contend that this means that the men **must be assigned according to seniority whether they are qualified or not**, despite the provisions of Rule 46 previously quoted, which clearly provide that employes must have **sufficient ability** for work in the higher class to be entitled to promotion.

The carrier does not seek to escape the provisions of that portion of Rule 43 (d) as emphasized. If both Allen and Glasscock had been found to have **sufficient ability**, there is no question but that Allen would have been given preferential consideration for the position, because that is plainly what Rule 43 (d) intends. It is beyond the provisions of the rules or the ambit of reasonableness, however, to contend that the carrier must promote **any man in accordance with seniority, whether qualified or not**. This would mean literally that an employe with a single day's seniority must be promoted to signalman, leading signalman, or foreman whether qualified or not. It should not be difficult to see clearly that none of the rules of the agreement covering signal employes were designed to follow any such extreme theory.

The carrier wishes to treat fairly all employes of all crafts or classes in the matter of promotion, but it will be seen that this case runs beyond that. This is purely a request that your Board sitting many miles removed from the situation find that Allen, an assistant with less than one-fourth the ordinary training and experience, be found qualified not only for signalman work, but for work in which he had to take the lead and be responsible for the work of others, when it was questionable to the carrier's supervisory officers who could observe him in his day to day work whether he could, with his limited experience, successfully perform the work of a signalman under the direction and supervision of others.

The employes in no way question the qualifications of Glasscock for work either as signalman or leading signalman, and the record will not be encumbered with a discussion of his qualifications. The fact that he worked as signalman in construction for more than two years speaks for his qualifications.

The evidence in this case is conclusive that Allen was not qualified for the leading signalman position, and there is no proper ground for disturbing the action of the carrier in this case.

OPINION OF BOARD: This claim presents basically the question as to whether or not Claimant Allen should have been assigned to the position of Leading Signalman in construction work in the Ashland Division instead of Mr. Glasscock who was assigned to the position. Mr. Allen had seniority on the Huntington Division as Signal Helper with a seniority date of December 17, 1941, and Assistant Signalman with a seniority date of February 2, 1944. Mr. Glasscock held seniority on the Cincinnati Division as Signal Helper with a seniority date of January 27, 1942. It will thus be seen that Mr. Allen, so far as seniority dates on their home districts are concerned, was senior to Mr. Glasscock as a Signal Helper and likewise held seniority as Assistant Signalman which Mr. Glasscock did not. Because there was not enough employes on the Ashland Division to fill construction positions, unfilled positions were bulletined to other seniority districts in accordance with Rule 43 (d). Both men made application for the Leading Signalman position. It was assigned to Mr. Glasscock.

Claimant relies upon the language in Rule 43 (d) as controlling here:

“* * * Men at work or laid off, from other districts, will be assigned to the positions remaining unfilled in accordance with seniority in the class on home districts. * * *”

The Carrier relies upon Rule 46:

“Promotion to positions within the scope of this agreement shall be based on ability and seniority; ability being sufficient, seniority shall govern.”

We think these two rules must be construed together. The quoted part of Rule 43 (d) upon which the Claimant relies must be read in connection with the two preceding sentences. These sentences limit “men working” to applications for positions in a class or classes higher than that in which they are working on the home district. Men laid off may make application for positions in any class. Clearly if they make application for a position in a class in which they hold seniority on their home district, then their qualifications are established and the question here presented would not arise. But if they make application, as was done here, for a position in a higher class where they have no established seniority on their home district, then the question comes, does the quoted sentence from Rule 43 (d) require that they be assigned, based on the seniority in their home district, to the position in the higher class without regard to ability? We do not think so. To so hold would be to say that the Carrier agreed to assign the senior man in the lower rated class to a position in the higher class even though he be entirely wanting in qualifications for the higher rated job. Such a conclusion is not warranted. Being qualified to hold a job is recognized throughout Rule 5. It is specifically recognized as an element in the promotion Rule 46 above quoted. We accordingly hold that where under Rule 43 (d) a man applies for a position in a class higher than that in which he holds an established seniority on his home district, he is not entitled thereto unless he have the ability to perform the work in the higher class.

Rule 46 does not permit the Carrier to select the employes having the greater ability of two qualified men, without regard to seniority. The rule provides “ability being sufficient, seniority shall govern”. The question is not, did Mr. Allen have ability equal to or greater than Mr. Glasscock, but, did Mr. Allen have sufficient ability? If so, then his seniority governs.

The Carrier, on the property, did not contend that Mr. Allen was without sufficient ability, but rather that Mr. Glasscock had the greater ability. (See letter of Mr. Roll, Supervisor Signal Construction, to General Chairman, set out in the Claimant's submission.) Under the rule that is not sufficient to give Mr. Glasscock the job. The Carrier so construes the rule in its position. The Carrier, by the position taken on the property, has in effect admitted that Mr. Allen's ability was sufficient. Here the Carrier undertakes to mend its hold and now takes the position that Mr. Allen did not have sufficient ability. To sustain its position here that Mr. Allen did not have sufficient ability it states the parallel records of the two men. While it might be found from this recital that Mr. Glasscock had the greater ability, it does not establish that Mr. Allen was without sufficient ability. The stated records go no further than to sustain the position of the Carrier, taken on the property, that Mr. Glasscock had the greater ability. The Carrier here, by agreement, has limited the exercise of its managerial function in making promotions to the conditions set out in Rule 46. It has not observed the rule.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Mr. Allen should have been assigned to the position of Leading Signalman, construction force, instead of Mr. Glasscock and the difference in pay claimed should be made to Mr. Allen.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.