

Award No. 10524

Docket No. SG-9481

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Central Railroad Company of New Jersey that:

(a) The Carrier violated the Signalmen's Agreement when it awarded the Assistant Signal Maintainer's position advertised in Vacancy Bulletin No. 1-1-56, dated January 4, 1956, to a junior Signal Helper.

(b) Signal Maintainer J. J. Tuthill complied with all the rules and regulations regarding filing of applications for Vacancy Bulletin No. 1-1-56, and should have been awarded the position as he was senior to the Signal Helper who was awarded the position.

EMPLOYEES' STATEMENT OF FACTS: Under date of January 4, 1956, the Carrier issued, to all employees concerned, Vacancy Bulletin No. 1-1-56, advertising for bids, position of Assistant Signal Maintainer.

Prior to the date Vacancy Bulletin No. 1-1-56 was issued, the claimant, J. J. Tuthill, had bid for and was awarded a position of Signal Maintainer. Having qualified for this position, he established seniority in the Signalman-Signal Maintainer class.

Upon receipt of Vacancy Bulletin No. 1-1-56, claimant Tuthill desired the position and submitted bid for the Assistant Signal Maintainer's position advertised in the bulletin. There were no bids for the Assistant Signal Maintainer's position advertised in Bulletin No. 1-1-56 submitted from employees who held senior seniority to that of the claimant. Claimant Tuthill complied with all the rules and regulations regarding the filing of applications for the position advertised in Bulletin No. 1-1-56, and, as he was the senior bidder for the position, he should have been awarded the position.

The Carrier arbitrarily assigned the position to a Signal Helper who had submitted bid for the position and who held no seniority in the Assistant Signal Maintainer's class and who was junior to the claimant in the Signal Helper's class.

To concede the Organization's position in this claim would have the effect of nullifying the intent and meaning of Rule 43, which denies a man his seniority as Assistant Signalman or Assistant Signal Maintainer when he refused to promote himself. To grant a man the right to promote himself to a Signal Maintainer's position and then allow him to bid back on an Assistant Signalman's position, thereby permitting him to retain his seniority as an Assistant Signalman would, as we have stated, nullify the intent and meaning of this rule.

Inasmuch as this Carrier has shown definite proof that the agreement with the employes has not been violated, and to sustain this claim would do injustice to the effective rules, this claim should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the Employes' representatives.

OPINION OF BOARD: The essence of this claim is that J. J. Tuthill, employed as a Signal Maintainer, duly filed his application for the position of Assistant Signal Maintainer for which bids were invited, and was denied his seniority rights when the vacant position was awarded to a junior employe. It is alleged that Rule 38 of the applicable Agreement was thereby violated.

We have examined Rule 38 and all of the other rules of the Agreement and reach the conclusion that the employes misinterpret Rule 38. That Rule deals with force reductions and abolishment of two or more positions on the same day. In those circumstances the Rule affords the opportunity to a senior employe to displace a junior employe either temporarily or permanently, as the case may be. Such provisions are, of course, in furtherance of the basic principle of seniority under applicable circumstances. We think this Rule may not properly be extended to the factual situation shown in this docket. In this case, apparently for reasons of his own and without any showing of hardship, force reduction, or similar conditions, Claimant sought as a matter of absolute right to bid back into a lower classification. To justify such unorthodox procedure we think the Collective Bargaining Agreement should unmistakably reflect the intention of the parties to permit it. Our study of the Agreement reveals no such provision, expressed or implied, and consequently the claim lacks support.

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 Employe involved in this dispute are respectively Carrier and Employe 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1962.