

Award No. 11123

Docket No. SG-10616

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
THE LONG ISLAND RAIL ROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rules 47 and 49, when it made the following assignment:

Awarding of Position #2350, Bulletin #511 to F. C. Naber, award made on Bulletin #513 dated May 13, 1957.

Claim is made in view of the fact that Frank J. Mashek, Jr., who is senior to F. C. Naber, made application for the position cited above.

(b) The Carrier now pay Frank J. Mashek, Jr., the difference between his respective earnings and the earnings of F. C. Naber, overtime included, subsequent to May 10, 1957. [Carrier's Case SG-3-57]

**EMPLOYEES' STATEMENT OF FACTS:** On April 25, 1957, Bulletin No. 511 was issued, advertising Position No. 2350, Assistant Foreman with headquarters at T & S Gang #1, Jamaica.

Bulletin No. 511 is reproduced and attached hereto, and is identified as Brotherhood's Exhibit No. 1.

On May 13, 1957, Bulletin No. 513 was issued, awarding Position No. 2350, Assistant Foreman, to F. C. Naber.

Bulletin No. 513 is reproduced and attached hereto, and is identified as Brotherhood's Exhibit No. 2.

Inasmuch as an employe senior to Mr. F. C. Naber, namely, Frank J. Mashek, Jr., made application for Assistant Foreman Position No. 2350, and did not receive any consideration by the Carrier for the position, a claim was filed by General Chairman S. A. Yellowley with Mr. Christ Meyers, Assistant Chief Engineer, under date of May 21, 1957, as follows:

It is therefore obvious that the Management could not entrust the responsibility of such a project to an employe who is not qualified nor does not possess the knowledge of the work involved.

Furthermore, this Board has ruled, specifically in the Findings and Opinions of Award No. 3151 "\* \* \* It is the function of management to select competent employes. Except where it has limited itself by contract, the rights of selection is wholly within the discretion of management. The Board should hesitate to override the judgment of the Carrier on a matter of this kind and risk inefficient performance and operation."

The Carrier desires to make clear that nothing set forth herein is intended to underrate the claimant in any manner or form, nor is it a reflection upon his good character. It is primarily a fact that, unfortunately, he does not possess the necessary qualifications and the ability to competently perform the duties of an Assistant Foreman.

The Carrier, in summarizing its position, desires to emphasize the following points:

1. The Carrier has the prerogative to determine the fitness and ability of an employe.
2. The Carrier has not bargained away its managerial rights with respect to the selection of a qualified employe for promotion to the Foreman Class.
3. The Carrier properly assigned Naber who was the qualified senior applicant.
4. The burden of proof is upon a rejected applicant to establish that he has fitness and ability to occupy a position, and this has not been done.
5. There is no proof in the record that the decision of the Carrier was made on any arbitrary, capricious or unfair basis.

In view of the facts presented, and for the reasons stated, together with authorities cited herein, the claim is not supported by any provision of the applicable Agreement and it should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim here is similar to the one to in Award 11121 where we have discussed the issues and position of the parties in considerable detail. For the reasons therein stated we are obliged to conclude that there is no merit to the claim.

**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 the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1963.