

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company that:

(a) That the Seaboard Coast Line Railroad violated and continues to violate its current Agreement with its Signal Department Employees by denying Assistant Signalmen T. W. Keen and G. B. Goodwin Signalmen's positions in Signal Gang No. 6 covered by Bulletin No. 56 dated July 22, 1968.

(b) That the Railroad therefore allow Messrs. Keen and Goodwin compensation equal to what they would have earned on the Signalmen's assignments in addition to compensation actually earned for the period of time they are denied the positions, plus necessary expenses.

[Carrier's File: 15-40:15-7]

EMPLOYEES' STATEMENT OF FACTS: On July 22, 1968, the Railroad issued Bulletin No. 56 (Brotherhood's Exhibit No. 1) advertising seven positions for bids; among them were two positions of Signalmen, Gang No. 6 (Items Nos. 1 and 3). Assistant Signalman T. W. Keen entered as his first choice a bid on the Signalman's position identified as Item No. 1; Assistant Signalman G. B. Goodwin entered as his first choice a bid on the Signalman's position identified as Item No. 3. In both cases the bids were dated July 30, 1968.

On August 5, 1968, the Railroad issued Bulletin No. 57 (Brotherhood's Exhibit No. 2) identifying the employes to whom the positions advertised in Bulletin No. 56 had been awarded. No awards were made in five of the positions, including Items Nos. 1 and 3, it being contended that there were "no qualified bids."

There is an agreement in effect between the parties to this dispute bearing an effective date of July 1, 1967, as amended, which is by reference made a part of the record in this dispute, which provides in part as follows:

affected employes by such official notification that they were not qualified bidders. Mr. Anderson stated he had noted that subsequent to this case bulletins had been issued simply cancelling advertisements without any notation about no qualified bids. It was agreed this was a good practice and that it would be continued in such cases. Mr. Dick gained the impression from Mr. Anderson that the Keen-Goodwin claim would not be further progressed.

In view of the above I see no need for a further conference discussion of the matter as suggested by you.

While I cannot see where there is any dispute involved in the Keen-Goodwin claim that requires submission to the Third Division, since you have requested an extension of time until January 1, 1970 to permit of such handling the same is hereby granted."

**GEN. CHAIRMAN TO ASST. VICE PRES. - PERSONNEL,
SEPTEMBER 2, 1969**

"Please be referred to your letter of February 28, 1969, concerning our claim in behalf of Assistant Signalmen Keen and Goodwin account their not being awarded advertised positions of Signalmen on which they had bid.

In the second paragraph of your letter you stated that it had been agreed that the present practice of simply cancelling the advertisements covering positions Signalmen-Signal Maintainers when there are no qualified bidders therefor rather than issuing bulletins with notation 'no qualified bids' was good, and such practice will be continued in such cases.

It should be clearly understood that there was no agreement on the part of the undersigned to abrogate or mitigate any part of the written agreement between this Brotherhood and The Seaboard Coast Line Railroad."

OPINION OF BOARD: Claimants, Assistant Signalmen in their first of eight periods of training (Rule 7(b), infra), each applied — and was the sole applicant — for separate positions of Signalmen bulletined July 22, 1968. By bulletin dated August 5, 1968, the bid of each Claimant was rejected for the given reason "NO QUALIFIED BIDS." Petitioner, citing Rule 7(b), contends that each Claimant was contractually entitled to promotion to the bulletined position, for which he filed applications, for a period of 65 days in which to demonstrate his qualification to perform the duties of Signalman.

The following Rules, with emphasis supplied, are pertinent to the resolution of the issue:

"RULE 7.

ASSISTANT SIGNALMAN - ASSISTANT SIGNAL MAINTAINER

(a) **An employe in training for a position of signalman or signal maintainer, working with and under the direction of a signalman or signal maintainer, shall be classified as an assistant signalman or**

assistant signal maintainer. He shall have common headquarters with the signalman or signal maintainer under whom working.

* * * * *

(b) The basic training for assistants shall consist of eight periods of 130 eight-hour days of service each, overtime excluded. Assistants shall have the right to promotion in the order of their seniority if a position is open and they can qualify in less than their eight periods. If an employe so promoted fails to meet the requirements of the position at the expiration of 65 eight-hour days, he will exercise seniority in the assistant's class in order to secure the necessary training and experience to complete his apprenticeship. Men returning to the assistant class hereunder forfeit all seniority in the higher class or classes.

RULE 6.

SIGNALMAN - SIGNAL MAINTAINER

An employe assigned to perform work generally recognized as signal work shall be classified as a signalman or signal maintainer. Signal work referred to herein includes the construction, installation, maintenance and repair work as covered in Rule 1 (Scope) of this agreement.

RULE 1. SCOPE

This agreement governs the rates of pay, hours of service and working conditions of all employes specified in Rules 2, 3, 4, 5, 6, 7, and 8, engaged in the construction, installation, inspecting, testing, maintenance and repair, either in signal shops or in the field of all signalling, recognized signalling systems, interlocking plants, traffic control systems, wayside cab signals or apparatus, wayside train stop and train control systems, highway crossing protection devices, spring switch mechanisms when protected by signals, train order signals, car retarder systems (except track work in connection therewith), bonding of track, together with all appurtenances, devices, apparatus and equipment necessary to said systems and devices as named herein, as well as any other work generally recognized as signal work.

No employe other than those classified herein will be required or permitted to perform any of the work covered by the scope of this agreement."

A Signalman is a journeyman (Rules 6 and 1). An Assistant Signalman is an apprentice engaged in a course of training with the objective of qualifying for promotion to Signalman when a vacancy occurs in that classification (Rule 7(a) and (b)). The parties have agreed that in the ordinary course successful completion of an "eight periods of 130 eight-hour days of service each" as an Assistant Signalman is a prerequisite to qualification for Signalman. Neither party has standing to state otherwise before this or any other forum. But, there is one agreed upon exception prescribed in the second sentence of Rule 7(b):

"Assistants shall have the right to promotion in the order of their seniority if a position is open and they can qualify in less than their eight periods."

Under this provision it is Carrier's prerogative to first exercise its judgment as to whether an employe is qualified or not for promotion before he has successfully completed his basic training. Should Carrier's decision—whether it be "qualified" or "not qualified"—be challenged, the burden of proof that it is contrary to fact is borne by the challenger.

Petitioner herein has not satisfied its burden of proof that Claimants were qualified by substantial factual evidence of probative value. We, therefore, will deny the Claim.

The third sentence of Rule 7(b), supra, is applicable only after an employe is "promoted" as provided for in the preceding sentence. Since Claimants were not "so promoted" it is not relevant in our resolution of the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

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 December 1970.