

**Award No. 19144**

**Docket No. SG-19195**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

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**Thomas L. Hayes, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (Lines West of Buffalo):

On behalf of Oscar Birman for the difference between the Leading Signal Mechanic rate of pay and the pay he received since not being permitted to displace onto a Leading Signal Mechanic position on or about June 4, 1969.

**EMPLOYEES' STATEMENT OF FACTS:** As indicated by our Statement of Claim, this dispute arose because carrier did not permit the Claimant, Mr. Oscar Birman, to displace onto a Leading Signal Mechanic position on or about June 4, 1969. The record will show that a basic issue is based on a new Signal and Communication Supervisor's contention Claimant was not qualified, even though prior supervisors had never questioned Claimant's ability even though he had worked "Leader" positions at various times since 1963.

Prior to the time this dispute arose, Mr. Birman was displaced by a senior employe in the exercise of displacement rights.

On June 5, 1969, Claimant notified Supervisor Hlynosky of his desire to displace Leading Signal Mechanic D. Caruso on Gang 56 per Rule 25(a) which reads:

**"RULE 25.**

**Position Abolished—Displacement**

(a) An employe whose position is abolished or who has been displaced shall have the right to take an open position or temporary work, or to displace any employe with less seniority provided he is qualified to fill the position and reports for duty within 14 consecutive calendar days from the date his position is abolished or he is displaced. Failing to do so, he will take the status of a furloughed employe."

Under date of June 11, 1969, the Supervisor notified Claimant his displacement was unacceptable, asserting he was not qualified for that position. As a result, the Brotherhood's Local Chairman filed a claim on behalf of

seniority and would not, therefore, be permitted to make the displacement sought.

The decision of Carriers Supervisor of Communications and Signals to disqualify claimant Birman for the referred to Leading Signal Mechanic position was appealed through the designated appeals channels, reaching Carrier's final appeals officer by letter from the General Chairman dated December 9, 1969. That appeal included a claim of Time Limit rule violation at an intermediate level as a result of which claimant Birman was paid the difference in earnings of the position to which he sought to exercise his seniority and those of his own Assistant Signal Maintainer position for the period June 4, 1969 to and including February 3, 1970.

Copy of Carrier's letter to the General Chairman dated February 5, 1970, confirming the time limit violation settlement and affirming the initial denial of the claim that Birman be permitted to exercise his seniority to the referred to Leading Signal Mechanic position is appended as Carrier's Exhibit "A."

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant O. Birman advised W. Hlynosky, Supervisor of C&S that he, Claimant, was exercising his displacement rights in accordance with provisions of the Agreement on Leading Signal Mechanics as a senior employee over the incumbent of position Job 01 in Division Gang No. 56. The displacement was to be effective June 4, 1969.

The Supervisor of Communications and Signals wrote Claimant Birman on June 11, 1969, stating that Birman was not regarded as qualified for the Leading Signal Mechanic Position with respect to which he sought to exercise his seniority and the Supervisor instructed Birman that he would not be allowed to make the displacement he desired. As a result, the Organization filed a claim on behalf of Mr. Birman for the difference between the Leading Signal Mechanic Position and his present position until he is displaced by a senior employee or the position is abolished.

Carrier offered to settle the claim up to February 3, 1970 because of a time limit violation and a partial payment was made by Carrier. The Claim is now before the Board on its merit for the period beginning February 3, 1970.

Claimant Birman had previously worked the Leading Signal Mechanic position in Gang 56 on at least two separate occasions for about two months each time with no question then being raised about his qualifications. Indeed, Supervisor Hlynosky, who disqualified Claimant admitted that "it may have been the consensus of former supervision that Mr. Birman was qualified for subject position" but that he, Hlynosky, felt Claimant lacked capability for the position.

A great many awards of the Third Division have reaffirmed the principle that it is the prerogative of management to judge the fitness of its employees and its determinations will not be set aside unless they are arbitrary, capricious or unreasonable.

In the case now before us, there is no evidence of bad faith on the part of management. In fact eight months after Claimant was first denied the opportunity of displacement, in an attempt to settle the controversy, Carrier

made a commitment to the General Chairman that Claimant would be given an examination for the purpose of making an objective judgment on the question of whether or not Claimant was qualified for the position.

The examination was Claimant's Waterloo. He was unable to answer certain questions correctly and declined to continue the examination to its conclusion. Claimant's representative was present at the test and he and Claimant agreed that it was fair and impartial.

The Organization bases the claim on Rules 25, 36 and 38. However the first two of these make it clear that neither displacement nor promotion may be based on seniority alone and that qualifications and ability are a necessary accompaniment. There is nothing in Rule 38 which would extirpate these prerequisites or interfere with the judgment prerogative of management hereinbefore discussed.

In view of the foregoing, the claim is seen to be without merit and is denied.

**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 Employees involved in this dispute are respectively Carrier and Employees 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: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.