

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19404  
Docket Number SG-19163

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(The Long Island Rail Road Company

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

SG-8-69 Mr. Ackley to be awarded position 4166 effective October 15, 1969, and made whole for all monetary losses so incurred because Mr. L. Valenti, a junior man, was awarded this position on Bulletin 927 of October 16, 1969 (assignment effective October 15, 1969).

OPINION OF BOARD: On September 12, 1969, Carrier advertised for bid on T&S Bulletin No. 925, Signalman Position No. 4166. Bids on this position were to be submitted and would be accepted by 12:00 Noon, September 19, 1969. Carrier states that this position required the holder of such position to utilize a truck in excess of 18,000 lbs. Claimant and Signalman L. Valenti bid on this position. Valenti was junior in seniority to Claimant. The involved position was awarded to the junior employee, L. Valenti. Carrier contends that one of the requirements for holding this position required the driver to hold a valid New York State Class No. 3 Chauffeur's License. The Claimant did not possess such license, but the junior employee did possess a Class 3 Chauffeur's license. The Organization contends that the requirement of holding such Chauffeur's license was not mandatory in order to maintain this position. The Organization further contends that Carrier advertised other positions using the same language and description on Bulletins for other positions without requiring the occupant of such positions to maintain a New York State Class 3 Chauffeur's License. The Organization further contends that by requiring such Chauffeur's License, the Carrier has discriminated against this Claimant and a violation of Rule 49. Carrier maintains that Claimant did not possess the necessary fitness and ability to hold the disputed position, and that, therefore, the junior employee was awarded the position.

This Board finds no probative evidence in the Record indicating that Carrier discriminated against Claimant by awarding the involved position to the junior employee. To the contrary, Carrier delayed awarding the position in order to give Claimant an opportunity to qualify by obtaining the license required by the State of New York. Having failed to obtain such license, Carrier had no alternative other than to pass over Claimant. This Board further finds that the other positions advertised in Bulletins using identical language except for the Bulletin number, did not require the occupant of such position to operate the heavy truck utilized in the position in question.

Carrier has the right to determine fitness and ability of its employees and absent a finding of arbitrary or capricious conduct on the part of Carrier in its determination, the decision of Carrier will not be disturbed. See Awards Nos. 15494 (Zumas), 11780 (Zack), 3151 (Carter), 17040 (Franden), 17612 by this Referee, and many others. In this instance, there is no showing that Carrier acted arbitrarily or capriciously. Therefore, this claim will be 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Kellen*  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.