

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21044
Docket Number SG-20995

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

(a) the Southern Pacific Transportation Company (Pacific Lines) violated the current Agreement between the Company and it's Employees of the Signal Department represented by the Brotherhood of Railroad Signalmen and particularly Paragraph 6 of the Agreement, Carrier File SIG 1-91 dated April 6, 1971, covering position of Special Signal Technician.

(b) Mr. Noxin be assigned to the position of Special Signal Technician, Headquarters, Elko, Nevada as advertised in Signal Department Notices #153 W dated April 24, 1973, #155 W dated May 14, 1973 and #158 W dated May 31, 1973 which was awarded to a junior employee Mr. M. H. Bell, Jr., in Signal Department Notice #162 W.

(c) Mr. Noxin be paid the difference between the rate of his present position and the rate of Special Signal Technician until such time as he is properly placed on position of Special Signal Technician at Elko, Nevada.

(d) this claim be a continuing claim until settled.

/Carrier's File: SIG 148-227/

OPINION OF BOARD: The parties' agreement, in paragraph 6 (SIG 1-91) contains the following language:

"6. Positions of Special Signal Technician shall be advertised to signal employees working within limits of the operating division /see Note below/ on which position is to be established. Assignment to position of Special Signal Technician shall be made by the Company from among employees who make application therefor, based upon qualifications and seniority. At some locations, qualifications may include possession of second-class radio license. When a senior applicant is not given favorable consideration because of alleged lack of qualifications, the matter will be reviewed by the Signal Supervisor with the Local Chairman before a permanent assignment is made."

(Note: An "operating division" on this property at time of this claim included signal employees of more than one seniority district.)

After bulletining a new position of Special Signal Technician at Elko, Nevada several times Carrier placed a junior bidder on the job without reviewing the matter with the Local Chairman as required by Paragraph 6. The Local Chairman wrote to Carrier and insisted that the Senior Bidder be assigned. Carrier admitted its violation of the Agreement and offered two possible solutions to the problems. They were:

- "A. Review qualifications of all applicants with various local chairmen involved with award of Technician's Position to stand as awarded in Bulletin 158W.
- B. Rebulletin position of Technician-Elko, with award to be made per agreement. Please acknowledge and advise."

The Organization rejected Carrier's proposal and continued to insist that Carrier assign the senior bidder or pay damages. At the outset the Board wishes to observe that this is not a case in which the record indicates that Carrier has wilfully disregarded its obligation to consult with the Organization. Although in its submission to the Board Carrier observes that review of the bidder with the Local Chairman would no doubt not change its position with respect to filling the vacancy, the comment came late in the game and after all attempts to resolve the matter on the property had been completed. It was essentially an afterthought. What is more important is that Carrier immediately acknowledged its error and offered realistic steps to correct it. These included recognition of the fact that no permanent assignment could take place until the agreed upon procedure had been completed. Of course, when the Local Chairman rejected all approaches to the problem other than assignment of the senior bidder there was no opportunity for constructive consultation about the qualifications of the bidders.

The Agreement contemplates a good faith review of the qualification of persons not selected by both Carrier and the Employees. Unless both parties remain open minded the review will be meaningless. It takes two to tango, and it takes two to carry out the review procedure provided by this Agreement. Neither side is without fault in the failure which is represented by this claim. To assess damages against Carrier on this record would be manifestly unfair. The Board declines to do so.

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 this claim should be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pender
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.