

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21676
Docket Number SG-21590

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.

On behalf of R. A. Stults, Assistant Signalman, account not being awarded the Signal Maintainer position at Moundville, Alabama, that he be awarded the position and be given seniority as a signalman ahead of Mr. J. R. Boothe, and that he be compensated for the difference in pay between what he received as an assistant signalman and what he would have received had he been awarded the position of signal maintainer, Moundville, Alabama, claim to begin on the day of Mr. Boothe's assignment in the signalman-signal maintainer class.
(Carrier file: SG-69)

OPINION OF BOARD: Claimant, an Assistant Signalman, entered Carrier's service in September 1973, (seniority date September 10, 1973) and as of October 1974 occupied a position of assistant signalman in Signal Yard No. 5, Lines West seniority district.

On July 22, 1974, by Bulletin the C & S Department advertised vacancy in positions of Signal Maintainer, headquarters Moundville, Alabama.

On August 5, 1974, by Bulletin the C & S Department announced that no bids had been received during the bulletin period from qualified employees above the assistant class. The Department then proceeded to consider applications of employees in the assistant class who were in training for positions of Signalman-Signal Maintainer but had not completed the required eight periods of basic training as provided in Rule 2 (e) of the Signalmen's Agreement.

On October 14, 1974, by Bulletin, an Assistant Signalman in Signal Gang No. 2 whose seniority date was November 19, 1973 was awarded the position of Signal Maintainer, Moundville, Alabama, by appointment.

The agreement Rule 2 (d) (2) states that basic training shall consist of eight periods of 130 eight hour days of service each but Rule 2(d) (3) states promotion to the position of signal maintainer may be made from the ranks of assistant signalman or assistant signal maintainer prior to that period under certain conditions qualifications being sufficient. Qualifications being sufficient seniority shall govern the selection.

The record shows the Carrier believed the person awarded the position was qualified and the Claimant at the time in question was not qualified.

The question raised here under Rule 2(d) was considered under a similar agreement provision in Third Division Award 18347 (Dorsey) in which it is said:

"Under this provision it is the Carrier's prerogative to first exercise its judgment as to whether an employee 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 the fact is borne by the challenger".

Petitioner in this appeal has not satisfied its burden of proof that Claimant was qualified by substantial factual evidence of probative value. The junior employee was properly promoted.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1977.