

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22168
Docket Number SG-22098

Louis Yagoda, 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:

(a) the Southern Pacific Transportation Company (Pacific Lines) has violated and/or misapplied the Agreement between the Company and its Employees in the Signal Department, represented by the Brotherhood of Railroad Signalmen, dated October 1, 1973, particularly (Appendix 'B') paragraph 2 and 5, of the Memorandum of Agreement dated September 20, 1971 and Rule 53 of the Schedule Current Agreement.

(b) Mr. J. B. Wisor be awarded the position of Lead Signalman (Temp) Gang No. 25, Headquarters, Klamath Falls, Oregon, as advertised in Signal Department Bulletin No. 165, dated February 11, 1976, which Mr. Wisor properly submitted his Bid on, and was the only Bidder. It is further requested that the assignment date be established effective February 27, 1976, the date of Signal Department Bulletin No. 166 and that any and all differential in pay rate accrued due to this assignment be made payable to Mr. J. B. Wisor according to the proper application of the hourly rate of pay to actual time worked."

[Carrier file: SIG 148-259]

OPINION OF BOARD: We must first reject the position of Carrier that the subject claim is moot because Claimant was promoted on April 21, 1976 to the position which the instant claim alleges he was improperly denied. It is clear, from the record, that the alleged injury sought to be rectified by the claim is one which is identified as a denial of promotion to Claimant as of February 27, 1976. Accordingly, there survives a claim for repair of differences in earnings lost to Claimant for the period of February 27, 1976 to April 21, 1976 because of actions taken in alleged violation of the Schedule Agreement between the parties.

As to the merits of the claim, we find that Rule 50 (a) cited by Carrier (in which ability and merit take precedence over seniority for promotion, and evaluation of the capability factors is reserved for management) must yield to the promotion provisions for Assistant Signalmen and Assistant Signal Maintainers. The latter deals in a particularized way with a clearly identified class of employees and, in keeping with the widely held rule of contract construction that the particular takes precedence over the general, this clause takes preeminence for the subject matter of the instant clause over the more general declaration of Rule 50 (a).

It is undenied that Claimant, an Assistant Signalman was the only applicant for the Lead Signalman's vacancy bulletined on February 11, 1976. It is also undenied that Claimant had earlier filled a temporary signalman's position on this Gang. There is no dispute concerning the fact that both Signalman and Lead Signalman positions are Class 3 positions, even though job responsibilities are not identical. Nor does Carrier refute Organization's representation that Carrier has, in the past, promoted Assistant Signalmen in training to Class 3 positions.

Carrier's objection to promotion of Claimant to this vacancy is based principally on the fact that Claimant had only recently completed the third training period of his training program. This consists of four periods of 130 eight-hour days of service. Because of this, Carrier considered him neither eligible or qualified for the promotion in question.

As a matter of contract rights and obligations, Carrier points out that Appendix "B" states in its Section 2 that "assistants shall be required to serve" the four periods of 130 eight-hour days. Organization calls attention to the fact that this clause concludes with the qualifier - "except as hereinafter provided in the agreement" and Section 5 of the same Appendix permits the elevation of Assistants who are still in training to Class 3 when "there is a need for more employees" in Class 3 than are available among those who have graduated. Carrier points out that the same Section goes on to say that, in such cases, the choice shall be among those "who have passed the greatest number of examinations" and calls attention to the fact that no evidence has been presented that Claimant had passed the greatest number of examinations, bearing in mind that he had only completed three of the four training periods.

We find that, in conformity with Section 5 of Appendix "B", a need did exist for more employees than were graduated, for the advertised promotion; this is demonstrated by the fact that the only applicant to apply for a job declared by Carrier as needing to be filled, was Claimant, a non-graduate.

We further find that a proper reading of the qualification in Section 5 that the choice shall be among those who have passed the greatest number of examinations, is that such comparisons are to be made among bidders. Inasmuch as Claimant was the only bidder, no such comparisons were possible.

In addition, we are persuaded from the record that to have appointed Claimant to the vacancy would not have brought about a harsh or absurd result. The record indicates that such promotions have been within past practice and that Claimant had demonstrated probable ability to perform the work in question, subject to the protection provided management in Section 5, of a 60-day trial period.

Inasmuch as the remediable aspects of the claim were ended by Claimant's promotion on April 21, 1976, our Award will sustain the claim for make-up pay only to that date.

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 violated.

A W A R D

Claim partially sustained in that there shall be paid to Claimant the difference between his earnings and the pay for Lead Signaller (Class 3) for the period between February 27, 1976 and April 21, 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.