

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24092
Docket Number SG-23461

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
 { Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on Consolidated Rail Corporation:

System Docket EL-12, Atlantic Region - Hoboken Division Case Conel 1861 -- claim of R. L. Devine because Carrier awarded the position of Signal Construction Foreman to a junior employee on Bulletin No. 127 dated April 4, 1978."

OPINION OF BOARD: The Carrier advertised a Foreman position and the Claimant applied for the job. However, a junior employee was given the assignment.

The pertinent portion of the Agreement provides that promotions shall be based on ability and seniority and ability being sufficient, seniority shall govern.

We are inclined to agree with the Organization that the Carrier, on the property, raised a number of items in defense of its actions but it did not attempt to demonstrate that the Claimant could not do the work involved. Thus there is no showing that the Claimant lacked the necessary ability and under those circumstances we will find a violation of the Agreement. We will award the Claimant the seniority accrual which he would have amassed had he been selected in lieu of the junior employee and he will be placed ahead of that individual on the pertinent seniority roster.

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.

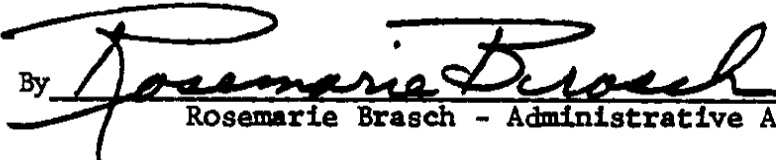
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1983.



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 24092

DOCKET NO. SG-23461

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen

NAME OF CARRIER: Consolidated Rail Corporation

Upon application of the representative of the employe involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The requested interpretation seeks to obtain a monetary remedy. However, the Employee's claim did not seek such relief and, of course, the claim could not thereafter be enlarged to include such requested relief. Thus, it was not the intent of the award to require compensation.

Referee Joseph A. Sickles, who sat with the Division as a neutral member, when Award No. 24092 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983