

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26190

Docket Number SG-26085

Edward L. Suntrup, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of Signalman D. L. McClure, ID #1521437, furloughed Signal Maintainer, due to Carrier not accepting his bid in accordance with Rule 47 of the current Signalmen's Agreement:

Claim (a): The Carrier violated Rule 47 of the Signalmen's Agreement when it failed to award D. L. McClure the position of Signal Inspector as advertised by Western Division bulletin WD-83-306, dated July 6, 1983.

Claim (b): That Mr. D. L. McClure be awarded position of Signal Inspector and receive all pay due Signal Inspector effective July 21, 1983, the closing date for bulletin WD-83-306. (Carrier file: 2-SG-701)"

OPINION OF BOARD: On July 6, 1983, the Carrier advertised the position of Division Signal Inspector by Bulletin WD-83-306. The Claimant, who had a seniority date in the Signalman's class of 1-20-81, bid on the position. After the closing date of the Bulletin the Carrier notified the Claimant that his bid was rejected because he was "... not qualified to work the position of Division Signal Inspector at this time." The position was awarded to another Signalman who had a seniority date in the same class of 12-9-81. On July 29, 1983, the Local Chairman of the Organization filed a Claim with the Manager of Engineering at Covington, Kentucky on the grounds that the Carrier was in violation of Rule 47 of the Operant Agreement since it awarded the position advertised in Bulletin WD-83-306 to a Signalman junior to the Claimant. Relief requested was that the Claimant be awarded the position of Division Signal Inspector and "... all pay due (the) Signal Inspector effective July 21, 1983, the closing date" of the Bulletin at bar. Rule 47 reads, in pertinent part, as follows:

"(a) After the closing time for receiving bids the position will be awarded by one of the following procedures in the order indicated:

1. To the qualified applicant having the greatest seniority in the class specified in the bulletin and senior to any employee covered by the sub-section 2 hereof."

It is the position of the Organization that the emphasis in Rule 47 should be placed on the concepts of "seniority" and "class" and that when the Claimant was promoted to the "Signalman, Signal Maintainer and Signal Inspector" class on 1-20-81 he met the requirements of the Carrier's Training Agreement as well as Rule 44 of the Current Agreement. According to this reasoning, the Claimant automatically had right to the Signal Inspector position on the basis of seniority alone. The Organization argued in the original Claim dated July 29, 1983 as follows:

"It is clearly the intent of the Signalman's Agreement that employees would become qualified by seniority class and not on an individual basis.

There are approximately 20 different positions on this seniority district. Even positions in the same class are not identical. However, if an employee is qualified for one position in this class, he must be considered qualified for all positions in this class. To do otherwise would serve to erase the word seniority from the entire Signalman's Agreement (emphasis added)."

The Carrier, on the other hand, rejected the bid of the Claimant and the Claim on property on the grounds that the Claimant was insufficiently experienced and knowledgeable to hold the position of Division Signal Inspector. The Carrier's position is stated in the record as follows:

"(The Claimant's) very limited experience with the Carrier, less than 3 1/2 years service . . . does not and cannot qualify him for the very responsible position of Division Signal Inspector. Signal Inspectors must have a thorough understanding of all signal systems and be proficient in all required FRA test.

Bulletin No. WD-83-306 was awarded to (the Claimant's junior colleague) as he was the only qualified employees who submitted a bid. (He) has 8 1/2 years service in the Signal Department, and is considered qualified (by management) for the position of Division Signal Inspector."

The Claimant as petitioner in the instant case has the burden of proof. (Second Division 5526, 6054; Third Division 15670, 25575; Fourth Division 3379, 3482; PLB 3696, Award 1).

First of all, it is true that the same class may have different positions as the Organization asserts. The record shows, however, that these different positions may be differentiated by the amount of authority and responsibility they have attached to them. This differentiation is measured by the wage rate associated with different positions. Otherwise it is unclear why there would be different wage rates. Further, Rules 3 and 4 of the Agreement clearly differentiate between the responsibilities of a Signal Inspector on the one hand, and a Signaller or Signal Maintainer on the other. It may be true, as the Organization states, that when the Claimant was "promoted" to the Signaller class on 1-20-81 the class included the positions of "Signaller, Signal Maintainer and Signal Inspector." But it is not true that the Claimant received the wage rate of Signal Inspector. Why? Because that is a more highly specialized position (see Rule 3) within the class to which a Signaller can only be assigned by Managerial prerogative on the basis of seniority and qualification as Rule 47, the "Assignments" Rule, clearly implies. If such interpretation is not the most reasonable one it is unclear why the parties formulated their intent, when framing Rule 47, with language which stressed that applicants must be "qualified." This Board is mandated to interpret contracts as written and the language contained in Rule 47 is clear and unequivocal. Nor does such interpretation as given herein to Rule 47 ". . . erase the word seniority from the entire Signallers' Agreement" as the Local Chairman of the Organization contended in the original Claim. On the contrary, the Board's interpretation simply recognizes that there are differently rated positions within the same class, as the record shows, and that Signallers can qualify for these differently rated positions by seniority and fitness and ability.

The Organization is correct when it argues that this case does not deal with "promotion" as the Carrier uses that term in its denial of the Claim on property, although Rule 43 of the Agreement also specifies that seniority and fitness and ability are the criteria for promotions. The instant case deals with qualifying, within the same class, for a differently (or higher) rated position on the basis of seniority and fitness and ability. The issue here at bar deals with assignment and not promotion.

On the basis of the evidence of record the instant Claim cannot be sustained.

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

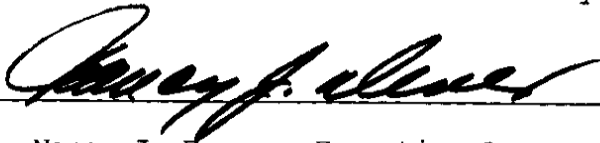
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1986.