

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

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

On behalf of Signalmen W. A. Mealor and D. T. Obedoza for the difference in their Signalmen's pay and that of a Special Signal Technician, beginning June 26, 1985, and continuing until they are awarded the Special Signal Technician's position as advertised in Bulletin Nos. 1, 2, 3, 4, 5, and 6 account of Carrier violated the current Agreement, particularly Rule 5A, when it assigned a less qualified and junior employee to the position." Carrier file: SIG-138-17.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute centers on the Carrier's selection of an employee to fill the position of Special Signal Technician, concerning which the controlling Agreement specifies particular conditions. Rule 5(a) reads in pertinent part as follows:

"SPECIAL SIGNAL TECHNICIAN. An employee who is assigned to and whose principal duties are the inspecting, testing, repairing, replacement and adjusting of items of signal equipment such as, but not limited to, hot box detectors, grade crossing predictor equipment, car retarder yard devices, and other specialized equipment in the Signal Department, and instructing other employees in the performance of these duties. . . .

Positions of Special Signal Technician shall be advertised to signal employees working within limits of the operating division on which position is to be established (with respect to employees employed at Sacramento Signal Shop and Los Angeles Signal Shop, provisions of Letter Agreement of April 16, 1971, file SIG 1-91, to apply). 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."

Resolution of this matter is somewhat clouded by the consideration that the Carrier undertook numerous postings and cancellations in the course of filling the position. The record shows, however, that the Carrier eventually "got it right." An employee with limited seniority but with extensive previous experience in the position was selected. The Organization raised a claim on behalf of two Signalmen senior to the selected employee, both of whom, according to the Organization, possessed qualifications and experience for the position of Special Signal Technician.

There are two principal aspects to this matter, the first is the degree to which the Carrier may or may not select a junior employee based on its judgment as to the employee's qualifications; the second is the Rule requirement of a review with the Local Chairman "before a permanent assignment is made."

As to the first point at issue, the Board finds that the Carrier acted within its contractual right to select an employee based on "qualifications and seniority" (emphasis added). This phrase does not place seniority in a predominant category. In determining the superior qualifications (in its judgment) of the selected employee, the Carrier was within its prerogative to select an employee less senior to other applicants. The previous experience of the selected employee in identical responsibilities formed a rational and non-arbitrary basis.

In its defense, the Organization cited Third Division Award 19432, which called on the Carrier to provide "adequate evidentiary support and explanation" of its selection. In that instance, however, the criteria for promotion were "seniority, fitness and ability; fitness and ability of applicants being sufficient, seniority shall prevail." This is not untypical of such provisions, but it can be readily distinguished from the language here under review, which simply calls for consideration of "qualifications and seniority", indicating no preference to seniority.

The second matter concerns whether or not the Carrier followed the provisions of Rule 5(a) in assuring that "the matter [was] . . . reviewed by the Signal Supervisor with the Local Chairman before a permanent assignment is made." The Carrier may well have failed to meet this requirement in timely fashion. The selection was, however, extensively reviewed with the Local Chairman during the Claims handling procedure.

The Board cannot condone the Carrier's apparent failure to follow the consultation process. However, it would be an entirely excessive remedy to find that this would require the selection of another employee for the position. Such would clearly invade the Carrier's retained right to determine qualifications of applicants.

Put another way, even if the review with the Local Chairman had occurred on a timely basis, it is entirely speculative as to whether the selection decision would have been different.

In any event, the suggestion that more than one Claimant was affected is, of course, excessive, since only one position is involved.

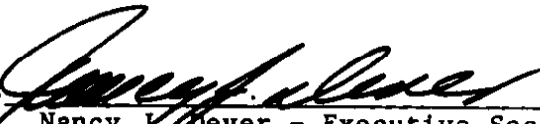
The Claim must therefore be sustained to the extent that the Carrier failed to review its decision "before a permanent assignment is made." The Award will determine, however, that the remedy sought is inappropriate, for the reasons stated.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.