

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Baltimore and Ohio Railroad Company (B&O)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railway Company (B&O):

On behalf of Signalman K. M. Quinlan, that he be awarded position in Bulletin No. CT-4-85 (Retarder Technician), account of Carrier violated the current Signalmen's Agreement, particularly Rule 3.5 - Retarder Technician, when it wrongfully awarded the position to Mr. R. D. Walker." Carrier file: 2-SG-794.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On February 22, 1985, the Carrier issued Bulletin CT-4-85 for first shift Retarder Technician position at its Queensgate Yard, Cincinnati, Ohio. The description of duties stated that a "(s)econd class radio license or equivalent (is)required." The Claimant bid on the position. At the time he held position of Leading Signalman. Also bidding on the position was fellow Signalman R. D. Walker who already held position of Retarder Technician, second shift, at Queensgate Yard. Bulletin CT-4-85 position was awarded to Signalman Walker. In May of 1985 the Claimant filed a "formal protest" with the Carrier's Manager of Engineering at Cincinnati on grounds that he was the "most qualified senior applicant for the position" advertised in Bulletin at bar. The Claimant alleged that the Carrier was in violation of Rule 3 1/2 of the Memorandum of Agreement signed between the parties on July 7, 1981. This Rule states the following:

"Rule 3 1/2
RETARDER TECHNICIAN

(a) An employee who is regularly assigned to and whose principal duties are to maintain, adjust, repair and replace all electronic and electromagnetic components associated with automatic switching and automatic retardation of cars in a classification yard designated by Carrier, including wayside equipment for cab signals and who may at times supervise other Signal Department employees in connection with his duties, shall be classified as a Retarder Technician. Such employees shall have license required by Federal Communications Commission and/or other regulatory body.

(b) Vacancies and new positions of Retarder Technician will be advertised and assigned in accordance with the Rules of the Schedule Agreement except that the Retarder Technician position shall be excepted from the seniority rules of the Agreement and will be filled by agreement between the Carrier's Program Coordinator-S&C and the General Chairman as to the senior qualified applicant.

(c) The rate of pay (including C.O.L.A.) for the position of Retarder Technician shall be \$11.18 per hour."

This Rule clearly designates the Retarder Technician position as being "excepted from the seniority rules of the Agreement." How then is the position to be filled? "...By agreement between the Carrier's Program Coordinator - S&C and the General Chairman..." who must agree on a "senior qualified applicant." The parties apparently agreed to go outside the general requirements of Rule 47 of the Agreement because the Retarder position was one which did maintenance and repair on highly sophisticated radar equipment in the Carrier's Queensgate Yard and there was mutual concern that only qualified Signalmen fill such position. Since this Special Agreement amends the General Agreement between the parties with respect to the application of the seniority rule as it applies to Retarder Technician, the Special Agreement has priority (See First Division Award 14812; Third Division Awards 10713, 18377, 18496). The Special Agreement also states, however, that "...such employees shall have license required by Federal Communications Commission and/or other regulatory body." The Claimant argues that the FCC no longer required a license to perform any of the duties of a Retarder Technician, and he should have been awarded the position because he was qualified and the more senior. The Carrier argues, in turn, that irrespective of whether the FCC requires a license or not anymore, it requires such, and this is part of the job description of Retarder Technician. In the instant case, the Claimant did not hold such license, and his fellow Signalman did.

The parties make much, in this case, over the issue of holding a license. The Board must observe on this point that Rule 3 1/2 states that a license shall be required for this position if such is required by a licensing body. This Rule does not restrict the Carrier from requiring a license as a qualification for the Retarder Technician position, which is what it did in Bulletin CT-4-85. Rule 3 1/2 further stipulates that the issue of "senior qualified applicant" shall be mutually resolved by the parties. This, in fact, must have been done in the case of the Claimant's fellow worker who was given the position of Bulletin CT-4-85: he already held the position of Retarder Technician, addressed by Rule 3 1/2, but on a different shift. The Carrier argues, which is not denied by the Claimant, that all Retarder Technicians at Queensgate who had been assigned to that position since Rule 3 1/2 was implemented, had licenses.

The requirement for a license for the position Bulletined on February 22, 1985 is not only supported by the job description in the Bulletin itself, which does not violate Rule 3 1/2, but also by mutual past practice of the parties on this property when they implemented Rule 3 1/2 after 1981. On the basis of the record as a whole the Claim cannot be sustained. There was no violation of the Agreement.


The Carrier alleges that the Organization changed and enlarged the Claim on property. Given the Board's findings on merits, its need not address this issue.

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 29th day of June 1989.