

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (UP):

On behalf of R. B. Arndt for the difference between his present position and that of a General Maintainer's compensation, beginning August 21, 1987, and continuing until this dispute is settled, account of the Carrier violated the current Signalmen's Agreement, as amended, particularly the 'Note' following Rule 2, when it did not allow or permit the General Chairman to participate in the written and oral test given him. Carrier file 880059."

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.

The significant events leading to this Claim arose when the Claimant requested to take a test for the position of Electronic Technician. The test was administered and graded on August 21, 1987, with the General Chairman present. When the Claimant failed to obtain a passing grade, it triggered the Claim at hand.

The relevant points of contention is that the Organization asserts that it has a right to participate in determining the content of the test. In so asserting, it relies on the language of the "Note to Rule 2" of the Agreement which reads:

"Positions of signal inspector, signal foreman, signal shop foreman, assistant signal foreman, assistant signal shop foreman, general CTC maintainer, retarder yard maintainer and electronic technician will be bulletined and appointments made with due consideration for seniority, fitness and ability, the management to be the judge.

In the event a senior applicant for a bulletined permanent position is not assigned, and the position is assigned to a junior employe, the senior applicant will, upon written request by the General Chairman to the General Signal Engineer within ten (10) calendar days of date of assignment notice, be given a practical, oral and written test conducted jointly by the Carrier and the General Chairman to determine if the individual can demonstrate fitness and ability to be assigned to the position. Such test will be given within ten (10) working days, unless extended by mutual agreement, after request is made therefor. If the senior applicant passes the test, the employe shall be assigned to the position and the junior assigned employee will revert back to the position formerly held." (Underscoring added)

We have carefully studied the "Note to Rule 2," particularly that part on which the Organization mainly relies which reads "...conducted jointly by the Carrier and the General Chairman" and the arguments advanced by the Organization that the language can be construed to convey a right to participate in the formulation or the design of the test. We find no proof that the Organization had participated in the development of the test or that such was the intent of the parties in the past.

However, we note from the record that the Carrier would arrange to again administer the test to the Claimant if he so chooses to avail himself of that option.

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 7th day of August 1990.