NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1 THIRD DIVISION Award No. 29700

Docket No. SG-29748

93-3-91-3-105

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen

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(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation AMTRAK):

Claim on behalf of W. L. Riggin. Mr. Riggin is a Maintainer headquartered at Bay View, in Baltimore, MD. His regularly assigned hours are 0700-1500 Monday thru Friday, with relief days on Saturday and Sunday.

a) claim that the Carrier violated Rule 12-a (2nd par.), Appendix "C" paragraph A-1, and Appendix "R", of the February 1, 1987 Agreement between the Carrier and the Brotherhood of Railroad Signalmen, effective February 1,1987. The agreement was violated when W. R. Shultz was awarded position BA-042-EC4 (C&S Electronic Technician) on Bulletin No. 89-27, dated June 6, 1989. Mr. Shultz was awarded this position, effective June 16, 1989.

b) claim that Mr. Riggin be paid fourteen dollars and eighty cents per day for each day that Mr. Shultz is assigned to position BA-042-EC4 (C&S E.T.), beginning on June 16, 1989. This claim will be continuous, including all overtime, until such time that Mr. Riggin is assigned to the position that was awarded to Mr. Shultz. The amount of compensation requested for Mr. Riggin represents the difference in rate of pay per eight hour day between his and Mr. Shultz's positions. Mr. Riggin, whose bid was not considered by the Carrier, was the senior applicant for position BA-042-EC4 (C&S Electronic Technician). He should have been awarded the position ahead of Mr. Shultz." Carrier file NEC.BRS (S) - SD-418. BRS Case No. 8276.

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 employe 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 Claim contends that Carrier violated the Agreement when it failed to assign Claimant to an Electronic Technician position for which he obviously was not qualified. Before the position was awarded, Claimant was afforded an opportunity to take the Electronic Technician exam. A test score of 70% is considered a passing grade. Claimant had a scoring mark of 44%. The second time he took the test he scored 57%. At the time the Electronic Technician position was open, Claimant was not qualified; therefore, it was not an Agreement violation to refuse to allow his assignment thereto.

The Organization has pointed out that the employee awarded the position, at the time Claimant was seeking assignment thereto, had not been tested for the position. When this individual was eventually tested and failed, Carrier abolished the position. Had Carrier continued a junior unqualified employee on the position while denying Claimant the position on the basis of qualification, this case would be viewed in a different light. This is not the situation, though. When it was established that the junior employee assigned was not qualified, the position was abolished. Claimant, who was not qualified for the job, was not injured by a different unqualified individual being assigned to the job for a brief period of time.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.