

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30236
Docket No. SG-29865
94-3-91-3-238

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

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

Claim on behalf of L. W. Wilson. Mr. Wilson is a Maintainer (Communications) headquartered at the Odenton M of W Base. His regularly assigned hours are 0700-1530 Monday thru Friday, with relief days on Saturday and Sunday.

- (a) Claim that the Carrier violated Rule 12-a (2nd par.), and Appendix 'C' paragraph A-1, of the February 1, 1987, Agreement between the Carrier and the Brotherhood of Railroad Signalmen. The agreement was violated when the Carrier assigned W. R. Shultz to position 00-012-ET1 (Electronic Technician C&S), effective October 4, 1989.
- (b) Claim that Mr. Wilson be paid one hundred eighteen dollars and sixty four cents (8 hrs x 14.83 per hr) for each day that Mr. Shultz is assigned to position 00-012-ET1 (C&S E.T.), beginning on October 4, 1989. This claim will be continuous, including all overtime, until such time that Mr. Wilson is assigned to position 00-012-ET1.

Also, claim that Mr. Wilson be given a seniority date in the Electronic Specialist & Electronic Technician class as of October 4, 1989. Mr. Wilson, whose bid was not considered by the Carrier, was the senior applicant for position 00-012-ET1 (Electronic Technician C&S). He should have been assigned to the position ahead of Mr. Shultz. Carrier file NEC-BRS(s)-SD-435. BRS Case No. 8296.AMTRAK."

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 case involves a claim from a Signal Maintainer who alleges that he was improperly denied assignment to an Electronic Technician C&S position.

The operative facts of the case reflect that a position of Electronic Technician C&S was properly advertised on September 12, 1989, to employees of Carrier's Northeast Corridor Region, Philadelphia Division/South. The advertised position was awarded effective October 4, 1989, to Mr. W. R. Shultz who was a rostered Electronic Technician with seniority standing on the roster of Electronic Technicians as listed on the Northeast Corridor Region, Philadelphia Division/South, District No. 3 - Chesapeake Division. The employee awarded the Electronic Technician position was a qualified employee with seniority in the craft and class involved.

By letter dated November 27, 1989, addressed to the Division Engineer, the Organization initiated a claim on behalf of the named Claimant alleging that, even though he did not possess seniority as an Electronic Technician, he should have been awarded the position in question ahead of Mr. Shultz on the basis of alleged prior right of seniority on the Washington Terminal property, allegedly set forth in Appendix "R" Memorandum of Agreement dated July 20, 1984. The Organization argued that Mr. Shultz was originally awarded an Electronic Technician position on the former Washington Terminal property in 1987 and therefore his seniority in the Electronic Technician class was limited to the former Washington Terminal property. Therefore, it says, he had no demand right to assignment to subsequent Electronic Technician positions until after senior prior right former Washington Terminal employees such as Claimant had been given the opportunity to be considered for Electronic Technician positions under the provisions of the aforementioned Appendix "R."

The Organization further argued that "as of August 9, 1989, the Carrier itself determined that Mr. Shultz was not a qualified Electronic Technician." However, there is no support for or proof of this statement to be found in the case file.

The Carrier contended that, in accordance with the provisions of the Appendix "C" Agreement dated February 1, 1987, which Agreement set forth the procedures and provisions for the advertisement and assignment of Electronic Technician positions, the assignment of Mr. Shultz in this instance was proper. Carrier further contended that the aforementioned Appendix "C" contains a particular, specific provision for the attempted resolution of disputes relative to testing, qualifications or selection of employees for Electronic Technician positions and that this Agreement provision was not complied with by the Organization in the instant case.

Appendix "C" dated February 1, 1987, reads in pertinent part as follows:

- "A. Positions of Electronic Technician will be advertised throughout the Northern and Southern Districts of the Northeast Corridor and the Western District.

1. Award will be made to the senior qualified bidder in the class and on the seniority district involved. In the absence of any such bids, preference to award will be given the senior applicant from the seniority district involved, who qualifies pursuant to Section "C" of this Agreement.
2. Thereafter, preference will be given the senior qualified among applicants from:
 - a. the other two Southern District seniority districts combined then,
 - b. the Northern District, then
 - c. the Western District.
3. If the position cannot be filled in the foregoing manner, the Carrier may select new hires or other craft employees for the position.

The successful applicant for an Electronic Technician position will acquire seniority in that class, on the particular seniority district only, as of the date his pay starts in the Electronic Technician class. Such employee's pay will start in the Electronic Technician class on the date he begins working the awarded Electronic Technician position.

* * * * *

- D. Should questions on testing, qualification, or selection arise, the Assistant Chief Engineer C&S/ET and the General Chairman or their designated representatives will meet and attempt to agree on a satisfactory resolution of the question. If it cannot be resolved in that manner, appeal may be made within fifteen (15) calendar days after such meeting to the Director-Labor Relations.

* * * * *

- I. This Agreement, made effective February 1, 1987, supersedes any pre-existing Agreement between these parties on this subject and will remain in full force and effect until changed in accordance with the provisions of the Railway Labor Act."

Appendix "R" dated July 20, 1984, reads, in pertinent part, as follows:

"In view of the transaction which will result in the assumption by Amtrak of the Communication and Signal work formerly performed by employees of the Washington Terminal Company, the parties agree to the following:

1. The Agreement adopted May 7, 1976, [former Pennsylvania Railroad Company, Baltimore and Eastern Railroad Company - Brotherhood of Railroad Signalmen], as amended thereafter, by the National Railroad Passenger Corporation (Amtrak) and the Brotherhood of Railroad Signalmen (BRS) will apply on the former territory of the Washington Terminal Company.
2. Seniority District No. 3 - Chesapeake Division as described in the May 7, 1976, Amtrak-BRS Implementing Agreement is modified to include the former Washington Terminal Company property within that seniority district and will be re-titled District No. 3 - Consolidated Baltimore Division Seniority Roster.
3. Employees formerly employed by the Washington Terminal Company accepting an offer of employment from Amtrak pursuant to this Agreement shall have their Washington Terminal Company seniority in classes consistent with those in the Amtrak-BRS Agreement dovetailed into the new District No. 3 - Consolidated Baltimore Division Seniority Roster.

4. Existing seniority rosters for the Washington Terminal Company and the Amtrak Chesapeake Division will be frozen as of the effective date of the transaction covered by this Agreement and remain in use on Amtrak for a six (6) year period. During this six (6) year period, prior to an employee being able to displace any other employee based upon his Consolidated seniority rights, he must fully exercise his former (frozen) seniority rights.

In addition, during this period, positions to which Washington Terminal Company employees have prior rights and which are to be filled in accordance with Article IV.B. of the May 7, 1976, Implementing Agreement, as amended, will be filled first by former employees of the Washington Terminal Company. Likewise, in filling positions to which Chesapeake Division employees have prior rights, such positions will be filled first by Chesapeake Division employees.

However, commencing on the effective date of the transaction covered by this Agreement any position which is bulletined and is not bid by an employee from a frozen seniority roster will be awarded based upon the Consolidated Baltimore Division Seniority Roster.

Employees hired after the effective date of this transaction shall be placed on the Consolidated Baltimore Division Seniority Roster only.

During the aforementioned six (6) year period, employees formerly employed by the Washington Terminal Company accepting employment with Amtrak pursuant to this transaction, will retain full prior rights to positions which contain a preponderant amount of work which is within the former Washington Terminal Company property limits, and former Chesapeake Division employees shall have the same full prior right to positions on their former territory."

Initially the Board is compelled to address the serious procedural issue which exists in this dispute, namely, the alleged violation of the provisions of paragraph D of Appendix "C." That Agreement language is clear, unambiguous and specifically directed. If a question arises relative to the selection of an employee for an Electronic Technician position, the Agreement demands that there will be a meeting to attempt to agree on a satisfactory resolution of the question before the presentation of an appeal on the issue. If no resolution can be achieved at this required meeting, then an appeal will be made within a specified time period directly to the Director-Labor Relations. This procedure was agreed to by the parties. This procedure is controlling in disputes of this specific nature.

In Third Division Award 27292, the Board ruled:

"This Board is loathe to dispose of Claims on overly technical grounds, but Carrier is within its rights to insist on compliance with the procedural niceties of the Agreement."

Here the parties were knowledgeable negotiators who voluntarily accepted a procedure to attempt to resolve potential disputes in connection with the selection of applicants for Electronic Technician positions. There is no indication that the Organization made any attempt whatsoever to comply with this Agreement requirement.

Even if that were not so, the fact situation in this case clearly supports the action as taken by the Carrier. The Electronic Technician position was properly bulletined to the appropriate seniority district. There is no proof in the case file to indicate that Claimant made any attempt to submit an application for the bulletined position. The employee who was awarded the bulletined position was, and had been, a rostered Electronic Technician since October 7, 1987, without challenge or protest by any other employee or by the Organization. There is no limitation or restriction to his Electronic Technician seniority indicated on the official seniority roster. To now contend that his standing on the seniority roster is somehow limited or otherwise tainted is both untimely and unsupported by any probative evidence or convincing argument.

The assignment of Mr. Shultz to the bulletined position in question was made in accordance with the explicit language of paragraph A.1. of Appendix "C." The contention that Claimant, who was not rostered or qualified in the class on the seniority district, had a prior right or demand right to the Electronic Technician position ahead of the rostered, qualified employee has no foundation in Appendix "R" or otherwise and is hereby denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.