

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31062
Docket No. SG-30424
95-3-92-3-177

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Corp. (former N&W Railroad):

- (a) The Carrier violated the Signalmen's Agreement in particular Rules 508 and 500, when on February 20, 1991, the Carrier failed to award the position of Signal Foreman Gang #591 or Gang #669 to Mr. Driscoll.
- (b) The Carrier should now award Mr. R. A. Driscoll the position of signal gang foreman and pay him the signal foreman's rate of pay starting March 4, 1991, the day Mr. Driscoll should have been assigned this position, and continuing for each day the violation continues. Carrier File SG-NORF-91-2. BRS File No. 8613."

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 employee 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.

Claimant established seniority as a Signal Foreman on May 10, 1979. During the ensuing years, Claimant occupied several Signal

Foreman positions but, according to the Carrier, it had continuing problems with his unsatisfactory work performance. Eventually, the Carrier disciplined Claimant for claiming time not worked on payroll forms and time sheets. Part of the discipline prohibited Claimant from exercising his Foreman's seniority for one year.

After the expiration of the one year prohibition, Claimant bid on and was placed on the vacant Signal Foreman's position for Gang No. 663. During the 30 day trial period, the Carrier experienced many problems with Claimant's performance including poor leadership and a failure to complete tasks on time. The Carrier had to assign another gang to help Claimant's gang complete a project because Claimant's gang took six days to perform work that it could have easily accomplished in one and one-half days. As a result, the Carrier disqualified Claimant from the Signal Foreman's position on March 8, 1990. After his bid was rejected, Claimant reverted to working in the Signalmen's class. Claimant appealed the Carrier's decision to disqualify him and, in Third Division Award 30119, denied his claim. After disqualifying him, the Carrier removed Claimant's name from the Foremen's seniority rosters.

Therefore, when Claimant bid on Signal Foremen positions for Gangs 591 and 669 during February 1991, the Carrier treated Claimant as if he did not have any Signal Foreman seniority. Since there were apparently no other bidders who held Foremen's seniority, the Carrier selected applicants from the Signalmen's craft to fill these two Foremen positions.

Rules 504(a) and 504(b) of the applicable Agreement provide:

- "(a) An employee accepting promotion to a position under the scope of this agreement and failing to qualify at the expiration of thirty days actually worked will forfeit seniority in the class and in any lower class or classes in which he established seniority by reason of his promotion, and may exercise a displacement in accordance with this agreement.
- (b) An employee transferring by bulletin assignment from one position to another in his own class and failing to qualify at the expiration of thirty days actually worked may place himself only by bidding on new positions or vacancies after being disqualified."

Unlike Rule 504(a) Rule 504(b) does not provide for forfeiture of seniority if an employee fails to qualify for a bulletined

assignment in his own class. Rule 504(b) clearly contemplates that once a signal employee satisfactorily completes the probationary period in the promoted class and obtains seniority as a Signal Foreman, the employee does not forfeit Foremen's seniority if the Carrier subsequently disqualifies the employee from a Signal Foreman's position.

The seniority forfeiture provision contained in Rule 504(a) applies only to an employee who accepts a "promotion" and then fails to qualify before the expiration of the 30 day trial period. The phrase "accepting promotion" means the first time a signal employee is awarded a position in a higher classification (in which he holds no seniority) than the employee currently occupies. Furthermore, Article V(b) defines "promotion" as the advancement from a lower to a higher seniority class. When Claimant was disqualified from the Signal Foreman's position on March 8, 1990, he was not being disqualified from a position to which he had been promoted. Rather, the position was available to him in the normal exercise of his seniority rights through the bulletin and bidding process because he had already attained seniority in the class of Signal Foremen.

Therefore, Claimant was governed by Rule 504(b) as opposed to Rule 504(a). As a consequence, the Carrier must reinstate Claimant's seniority in the Foreman class.

While Claimant requests that he should be placed on a Foremen's position in seniority order ahead of signal employees who do not hold seniority in the Foremen's class, the record reflects that Claimant was not qualified as a Signal Foreman in February 1991. The Board can presume that in February 1991, Claimant continued to be unqualified for a Signal Foreman's position pursuant to his disqualification back in March 1990. Indeed, this Board has already passed judgment on the Carrier's decision to disqualify him in March 1990. Claimant has not come forward with any evidence exhibiting that he possessed the ability to become qualified for the Foremen's job within the qualifying period. He held the same credentials and capabilities in February 1991 that he held in March 1990.

However, the Carrier shall reinstate Claimant's Foreman seniority without impairment and he may bid on new positions or vacancies per Rule 504(b) provided he upgrades his skills and abilities. If Claimant is a successful bidder, the Carrier will thereafter determine if he is currently qualified for the particular position on which Claimant places himself. If Claimant disagrees with the Carrier's decision, he may file a claim appealing the decision.

In summary, the Board denies the portion of the claim requesting that Claimant be placed on a Foreman's position and awarded backpay, but we sustain the claim to the extent that Claimant still holds seniority in the Foremen's class which he originally established on May 10, 1979.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.