

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31986
Docket No. SG-32582
97-3-95-3-513**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (NRPC-N):

Claim on behalf of D. W. Williams for the following:

- A. To require that he be given the Foreman’s qualification test, assigned to the position of Foreman if he successfully completes the test, and given a seniority date of March 8, 1994.**
- B. For payment of the difference between the rate of his position and the rate of Foreman, beginning April 25, 1994.**
- C. Claim account Carrier violated the current Signalmen’s Agreement, particularly Rules 37 and 53, when it denied the Claimant’s application for a position which was filled during the time that he was absent on leave for an injury. Carrier’s File No. NEC-BRS(N)-SD-682. BRS File Case No. 9621-NRPC(N).”**

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 were given due notice of hearing thereon.

Claimant, a Signalman, commenced a medical leave on December 20, 1993. At the time, Claimant did not possess Signal Foreman's seniority. While Claimant was on medical leave, on February 14, 1994, the Carrier advertised a temporary Signal Foreman's position (W252) at Old Saybrook, Connecticut. That position had been vacated by G. Stanley who was awarded another temporary Signal Foreman's position vacated as a result of the illness of Foreman C. Miller. Because there were no successful bidders on position W252, the vacancy was assigned to R. Hamilton effective March 8, 1994, with Hamilton establishing Foreman's seniority on that date.

On March 9, 1994 Signal Foreman Miller returned to his position which was being filled by G. Staley. Staley returned to his position which was temporarily filled by Hamilton, who in turn returned to her former position.

On March 20, 1994, Claimant returned from his medical leave and applied for position W252. Although the Carrier initially indicated that Claimant would be tested for that position, because the position no longer existed, the Foreman's test was not conducted. On April 25, 1994, Hamilton was awarded another Foreman's position (W312) at Groton, Connecticut.

This claim asserts that Claimant should be allowed to take the Foreman's test and, upon passing, be awarded position W252 effective March 8, 1994.

As the Organization points out, the above facts show that Hamilton worked the Foreman's position for one day and established Foreman's seniority and Claimant, who was senior to Hamilton and on medical leave, was not permitted to bid on the position upon his return from medical leave.

The Organization's argument that Claimant should be permitted to take the Foreman's test and, if successful obtain the Foreman's position is an equitable one. That argument heavily emphasizes the fact that junior employee Hamilton was in the position for only one day and obtained Foreman's seniority. However, the Organization's argument does not find support in the Agreement.

Rule 37 states:

"Employees may, upon request, be granted a leave of absence when the service requirements will permit.

* * *

Employees given leaves of absence in writing by proper authority of the railroad will retain their seniority rights.

* * *

Employees absent on leave, vacation or bonafide personal illness will be permitted, within three days of their return, to place bids for positions which have been advertised as vacant during their absence and which have been filled by junior employees."

But, similar Rules have been "interpreted as returning a disabled employee to the same seniority he had when he became disabled ... [and i]t does not allow an increase in seniority to other classes retroactively in terms of what 'might have been' or 'could have been,' had the employee actually applied and been qualified." Third Division Award 25935. Compare Third Division Award 19225 cited by the Organization which involved a dispute over positions where the returning employee held seniority in that classification. Third Division Award 20848 also cited by the Organization involved application of the Universal Military Training Act, an issue not involved in this case.

Without Rule support, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of May 1997.