

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34054
Docket No. SG-33993
00-3-97-3-327**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Long Island Railroad Company**

STATEMENT OF CLAIM:

"Claim of behalf of the General Committee of the Brotherhood of Railroad Signalmen of the Long Island Rail Road (LI):

Claim on behalf of K.E. Hall to require that he be allowed to exercise his seniority in the Assistant Foreman class and made whole for all compensation lost as a result of not being allowed to exercise his seniority in that class, beginning July 6, 1995, account Carrier violated the current Signalmen's agreement, particularly Rules 40, 47, 56 and 63, when it did not allow the Claimant to exercise his seniority onto an Assistant Foreman position. Carrier's File No. SG-17-95. BRS File Case No. 10193-LI."

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.

The Claimant has 23 years of service with the Carrier. In 1989, he was promoted to the position of Assistant Foreman. In November 1994, the Claimant incurred an injury that

prevented him from working until July 1995. On July 6, 1995, he attempted to displace a junior employee holding an Assistant Foreman's position in the construction area of the Signal Department.

Two Signal Construction Supervisors questioned the Claimant's ability to function as an Assistant Foreman in the Signal Department. Therefore, a meeting was held with the Claimant and his General Chairman on July 10, 1995, to discuss his abilities as an Assistant Foreman. At that meeting, it was agreed that the Claimant would participate in a 30-day period of retraining to refresh his knowledge of the Carrier's signal system. He actually participated in 20 days of retraining due to a vacation he had in July and August.

On August 17, 1995, the Carrier scheduled an examination for the Claimant. However, for a variety of reasons, he refused to take the reexamination. As a result, the Carrier refused to allow him to displace a junior Assistant Foreman. The Claimant therefore exercised his rights to a Signal Inspector's position at the mechanic's rate of pay.

On October 11, 1995, the Organization filed a claim on behalf of the Claimant contending that the Carrier acted in an arbitrary and capricious manner when it refused to allow him to displace the Hicksville Assistant Foreman on or about July 6, 1995.

Inasmuch as the Claimant had worked as an Assistant Foreman for five years, the Organization contends that there could be no reasonable doubt about his qualifications and the Carrier therefore had no right to require him to re-qualify for a position for which he had been deemed qualified for five years. The Organization requests that the Claimant be made whole for his lost earnings including two hours of overtime each day that he does not report for the Hicksville Construction Assistant Foreman position.

Rule 56 of the parties' Schedule Agreement is entitled Examinations Other Than Physical. Paragraph (d) of Rule 56 provides that in the event of a reasonable doubt as to an employee's qualifications the Carrier may require the employee to demonstrate his or her ability by a reasonable and practical test.

Inasmuch as two signal Construction Supervisors had questioned the Claimant's ability to function as an Assistant Foreman, the Carrier had "reasonable doubt" regarding his qualifications. There is no evidence that the concerns registered by the two Supervisors who had worked with the Claimant were totally groundless. Nor is there any evidence that they harbored any animus toward him. Therefore, the Carrier had the right to invoke Rule

56 and require the Claimant to demonstrate his ability as an Assistant Foreman by a reasonable and practical test.

Notwithstanding the Organization's assertion, the Board does not find that the Carrier acted arbitrarily or capriciously when it invoked its rights under Rule 56. The Claimant raised several objections to the examination scheduled for August 17, 1995, and the Carrier acceded to his objections. For instance, it agreed to remove certain individuals from participating in the reexamination whose presence the Claimant objected to. Moreover, as noted above, the Carrier gave the Claimant a 30-day period of retraining to enable him to refresh his knowledge of the Carrier's signal systems because he had been away from his Assistant Foreman's duties for approximately eight months. Also, the Claimant was only going to be tested in areas where the Carrier had questions about his fitness and ability as an Assistant Foreman.

For all the foregoing reasons, it is the considered opinion of the Board that the Carrier did not act in an arbitrary or capricious manner when it refused to allow the Claimant to displace into an Assistant Foreman's position until he demonstrated his ability as an Assistant Foreman by a reasonable and practical test. The claim is denied as a result.

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 25th day of May, 2000.