

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34172
Docket No. SG-34545
00-3-97-3-414

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

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of K. C. Mooso for payment at the Special Signal Technician rate, beginning August 16, 1994, and continuing until this matter is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 37 and 42, when it denied the Claimant’s right to exercise his seniority rights by displacing onto the position of Special Signal Technician at Sparks, Nevada. Carrier’s File No. SIG 95-25. General Chairman’s File No. SWGC-1012. BRS File Case No. 10306-SP.”

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.

In August of 1994, Claimant K. C. Mooso attempted to displace onto the position of Special Signal Technician at Sparks, Nevada, after his position of Leading Signalman was abolished. A qualification test was administered to the Claimant and other employees who had bid for the same position each time it was advertised. The Claimant failed three times to pass the test. An employee who was junior to the Claimant, and who did pass the test, was eventually awarded the position. The Organization submitted a claim on behalf of the Claimant in a letter dated August 22, 1994. The Organization's claim, as well as subsequent appeals, was denied by the Carrier.

It is the Organization's position that Rule 37 of the Agreement provides that the Claimant was entitled to displace a junior employee. Further, the Organization asserts that Rule 42 allows an employee to be placed on the position and allowed 30 working days in which to qualify.

The Organization also contends that the Claimant was denied the opportunity to qualify for the position based on an invalid test administered by the Carrier. Additionally, the Organization asserts that the Carrier's Signal Technician test, which was established unilaterally after a previous testing process and established by Agreement between the parties, had been terminated. The Organization contends that administering a qualification test, which would be an exception to the Agreement, needs to be addressed in the collective bargaining process, not through unilateral action.

The Carrier asserts that the Claimant was not qualified for the position in question, as he failed the prerequisite qualification test three times in the prior four months while attempting to obtain the position by bid. Further, the Carrier contends that the Organization has refused to recognize an award which upheld the Carrier's actions in an identical situation. Additionally, the Carrier contends that the Signal Technicians are highly skilled, the positions are specialized, and that Rule 1 - Seniority Class One, shown below, makes clear that the Carrier has a unilateral right to determine qualifications for the position.

"RULE 1 - SENIORITY CLASS ONE, SECTION A.P1

Positions of signal technician shall be advertised. The Company shall be the judge in determining signal technician qualifications and in making promotions to such positions subject to Rule 42.

* * *

The application of Rule 42 is key to the case at hand."

Rule 42 in pertinent part:

"RULE 42 - PROMOTIONS TO A HIGHER CLASS

- (A) Promotions shall be based on ability and seniority. Ability being sufficient, seniority shall prevail.**
- (B) An employee accepting promotion will be granted thirty (30) working days in which to qualify."**

After careful review of the record, the Board agrees with the position of the Carrier. The Claimant was given three opportunities to pass a qualification test for the position. He failed all three. The evidence in the record showing the description of the position is such that the importance of being able to pass a qualification test is clear, and it has historically been the position of this and other Boards that it is the Carrier's right to make the final determination who is qualified unless such determination is unreasonable or arbitrary. Rule 42 makes it clear that promotions shall be based on "ability and seniority. Ability being sufficient, seniority shall prevail."

Third Division Award 31238 is on point with the Board's position in the case at hand. In that Award, the Board held in pertinent part:

"The Board finds an analysis of the record does not sustain the claim and it must be, and is hereby, denied. The Carrier acted properly in awarding the West Colton Signal Technician position to Mr. Rabenstein because he had demonstrated that he fulfilled the requirements of Rule 42 concerning ability versus seniority. The Claimant and Mr. Rabenstein took the test for Signalmen Technician in August 1991 and both candidates failed. However, in October 1991, Mr. Rabenstein took and passed the test for Signal Technician in Los Angeles and acquired Class I Seniority. The Claimant elected neither to bid nor take the test for the Los Angeles vacancy. The Carrier was justified in concluding that Mr. Rabenstein possessed more ability for the job tha[n] did the Claimant within the purport of Rule 42.

The Board also finds the Organization is in error in contending that Rule 42(b) grants an applicant for a promotion to higher class job 30 working days to qualify. This provision only applies to applicants or candidates who have been tentatively accepted for the vacancy. It does not apply to applicants applying for the vacancy.

In summary, Mr. Rabenstein, having passed a valid test for the position, and having thereby acquired Class I seniority, it was contractually proper for the Carrier to have selected Mr. Rabenstein for the West Colton vacancy.”

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 20th day of July, 2000.