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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34176
Docket No. SG-34711
00-3-98-3-380

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
(Wheeling and Lake Erie Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling & Lake Erie Railway Company (W&LE):

Claim on behalf of C. H. Morgan for payment of any wages lost when he was not assigned to the position of System Signal Technician on March 21, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rules 14 and 21, when it assigned to this position a junior employee who had no seniority date. General Chairman’s File No. 231/970418A. BRS File Case No. 10643-W&LE(S).”

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.

At the time this dispute arose Claimant C. H. Morgan, II, who established seniority under the Signalmen’s Agreement on April 24, 1995, was assigned the position

of Assistant Technician. In March of 1997 the Carrier advertised a System Signal Technician position, for which the Claimant applied. The Organization contends that the Claimant was the senior applicant for the advertised position, since the Carrier did not have any applications from employees in the Technician's class. The Carrier awarded the position in question to K. L. Neeley, a newly hired employee, rather than to the Claimant. The Organization made a claim on behalf of the Claimant in a letter dated April 18, 1997, which was denied by the Carrier. Subsequent appeals were denied as well.

It is the Organization's position that the Carrier was obligated to award the position to the Claimant since he was the senior qualified applicant. The Organization points out that Rule 21, in particular Paragraph A, stipulates that promotions are to be based on ability and seniority. Additionally, the Organization contends that the Claimant had the necessary ability to qualify for the position. Rule 21 reads in pertinent part as follows:

"RULE NO. 21 - PROMOTIONS

- A. Promotions from positions in one seniority class to positions in another seniority class within the scope of this Agreement shall be based on ability and seniority; ability being sufficient, seniority shall govern."

The Organization asserts that the language in Rule 21 clearly sets for the intent of the Parties. Specifically, "Promotions shall be based on ability and seniority; ability being sufficient, seniority shall govern." While the Organization recognizes that the Carrier is not precluded from hiring new employees, it contends that new employees should not be promoted before a qualified employee with established seniority. The Organization also relies on Rule 14, which reads in pertinent part:

"RULE NO. 14 - SENIORITY

- A. Seniority shall consist of rights based on relative length of service of employees as hereinafter provided and may be exercised only when vacancies occur, new positions are created or in reduction in force. Seniority shall be confined to the Seniority Districts as described in Rule 13 of this Agreement.

- B. Seniority begins at the time an employee's pay starts in the seniority class in which employed, except that an employee performing temporary service in a higher class or temporary service in another seniority district will not establish seniority in that class. . . ."

The Organization also contends that while the Carrier asserts Mr. Neely was accruing seniority while he was working temporarily, Rule 14 provides that he could not have acquired Technician seniority until he was actually awarded the position by bulletin.

The Carrier maintains that Mr. Neely, who was hired by the Carrier as a System Signal Technician on February 26, 1997, established seniority in that class at the time his pay started as a System Signal Technician. The Carrier contends that the position in question, which was bid by Mr. Neely and the Claimant, was awarded to Mr. Neely on March 6, 1997, because the Claimant did not establish seniority as a System Signal Technician until April 24, 1997.

Further, the Carrier asserts that it would have been in violation of Rule 20 - Bulletin and Assignment, which reads in pertinent part, "If no qualified bids are received for advertised vacancy, the junior employee may be assigned to the position." The Carrier also asserts that it would have been in violation of Rule 21 - Promotions. In addition, the Carrier asserts that since the Claimant did not attempt to secure the System Signal Technician position when Mr. Neely left shortly after being awarded the position, the claim is, "merely an attempt to secure an unwarranted monetary windfall."

The Board agrees with the position of the Organization in the claim at hand. There is no evidence in the record that Mr. Neely was the senior qualified employee for the position of System Signal Technician. On the contrary, a letter by the Carrier Representative R. M. Villard dated August 6, 1997, states in pertinent part, "Mr. Neely, the "junior" employee was hired as a qualified System Signal Technician and therefore when he was assigned to the bulletined vacancy, on a temporary basis while it was under bulletin, he established seniority as a System Signal Technician." Such Carrier designation does not confer upon Mr. Neely contractual seniority superior to that of the Claimant.

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AWARD

Claim sustained.

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 20th day of July, 2000.