

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35030  
Docket No. SG-34708  
00-3-98-3-366**

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

**(Brotherhood of Railroad Signalmen**  
**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc. (former Baltimore and Ohio**  
**( Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):**

**Claim on behalf of F. E. Clawson for payment of the difference between the Lead Signalman’s rate and the Foreman’s rate, beginning May 7, 1997, and continuing until the Claimant is awarded the position of Foreman at the Consolidated Signal Shop, and for the Claimant to be assigned the corresponding seniority in the Foreman’s class, account Carrier violated the current Signalmen’s Agreement, particularly Agreement No. S-069-87 and Rules 26, 27 and 28, when it awarded the Foreman’s position to a junior employee on May 7, 1997. Carrier’s File No. 15(97-135), BRS File Case No. 10561-B&O.”**

**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 dispute at issue arises from a claim that the Carrier violated the current Agreement when it awarded a Foreman's position at the DePriest Signal Shop in Savannah, Georgia, on May 7, 1997 to an employee who, it is claimed, is junior in seniority to the Claimant.**

**It is the position of the Carrier that the Claimant was not awarded the Foreman's position because his seniority was that of Lead Signalman/Signalman, or what the Carrier urges was second in rank or seniority class to that of Foreman, whereas the employee awarded the position held seniority in the rank first below that of a Foreman, i.e., a Technician. In this respect, the Carrier submits that a three tier seniority roster was established by the April 14, 1987 Signal Shop Coordination Agreement (CSXT Labor Agreement S-069-87) effective with the coordination of facilities at Savannah, Georgia. That is, three separate classes of employees at the DePriest Signal Shop, namely: Class 1 for Foremen (3 positions); Class 2 for Technicians (4 positions); and, Class 3 for both Lead Signalmen and Signalmen (9 and 50 positions, respectively), with the Coordination Agreement stating that the new roster "shall be established under the terms and conditions of the Agreement between the SCL and BRS, as specifically modified herein." The Carrier therefore says that a preference for positions is determined by employee seniority in the next lower position class, not by relative length of service, and not by Rule 26 of the Agreement, which reads in part as follows: "(a) Seniority shall consist of rights based on relative length of service of employees as provided for in this Agreement."**

**The Carrier also references Rule 27, Seniority Classes, as support for its position that promotion be from one class to another. However, the Carrier does not cite any contract language in Rule 27 or the Signal Shop Coordination Agreement that establishment of particular seniority classifications also prescribes that promotion from one numerically designated class to another must be in consecutive order. Rule 27 of the Agreement merely states that there shall be six seniority classes, which are therein identified, and then prescribes only as follows: "Seniority rights of employees will extend over the entire system."**

**The Organization says that while there is no question that the Signal Shop Coordination Agreement provided for the establishment of a new seniority roster for the coordinated Signal Shop, that the establishment of a new seniority roster with the**

three separate classes and titles was only for the purpose of separating that particular roster from the system seniority roster for displacement purposes. This action, the Organization argues, did not serve to modify Rule 26 as concerns the exercise of rights on a roster being subject to relative length of service.

In support of the instant claim, the Organization makes the unrefuted statement that in each of three prior instances over the past ten-year period wherein there was a vacant position of Foreman that the position was awarded to a senior employee based on the applicant's seniority as a Lead Signalman/Signalman. This, the Organization says, despite a junior employee holding seniority as a Technician likewise having applied for each of the vacant Foreman positions. The Organization, therefore, urges that the Board recognize such past action as having established a contractual mutual acquiescence and binding practice that the senior applicant from the Lead Signalman/Signalman class is to be awarded a position as Foreman.

Although the above contentions of the Organization suggest that seniority as a Lead Signalman/Signalman was the sole factor utilized in the selection process for the awarding of a Foreman's position, it would seem to the Board that other factors also go into the selection procedure, as for instance, that an applicant for the position of Foreman be required to demonstrate that they possess qualifications or what is at times called fitness and ability for the position.

The argument that the Organization makes about employees who held Lead Signalman/Signalman seniority being awarded positions of Foreman over the past ten years does, however, raise some question concerning the merits of the Carrier's argument that in establishing the three separate seniority classes it was intended that the selection of Foremen would be narrowly limited to the few employees holding seniority as Technicians.

In the circumstances of record as presented and developed, the Board concludes that the Claimant should be provided a fair and reasonable opportunity to demonstrate whether he possesses the necessary fitness and ability to perform the duties of the position of Foreman. Should the Claimant successfully demonstrate that he possesses the necessary fitness and ability for the position, then he is to be given a seniority date as Foreman effective the same date as the instant claim, ie., May 7, 1997. Further, upon attaining the position of Foreman, the Board will direct that the Claimant then be compensated for the difference in overall compensation that he

**sustained as a result of working as a Lead Signalman/Signalman as opposed to a Foreman. The amount of compensation, if any, will be computed on the basis of the average number of hours worked during the interim period of time by the other Foremen at the Signal Shop.**

**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 25th day of October, 2000.**