

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35755
Docket No. SG-35557
01-3-99-3-479**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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:

Claim on behalf of J.R. Schirling, M.W. Schaffer and D.R. Hepner, Jr. for their seniority rights restored to their original positions in the Assistant Foreman/Assistant Inspector's class, account Carrier violated the current Signalmen's Agreement, particularly Rule 12, when it did not allow employees who bid positions in the Assistant Foreman/Assistant Inspector's class to qualify for these positions and instead forced the Claimants to accept these positions or relinquish their seniority. Carrier's File No. NECBRS(S)SD-779. General Chairman's File No. RM3163-48-0698. BRS File Case No. 10966-NRPC(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.

These claims were filed by the Claimants on January 15, 1998 protesting their force assignments to the Assistant Foreman/Assistant Inspector positions in Perryville, Maryland, when there were bidders for the position who could have been tested, and the removal of their names from the Assistant Foreman/Assistant Inspector roster as a result of their refusal to accept the position. They claim a precedent on the property not to force assign under Rule 12(f) unless no bids were received or the tested employee failed the examination, and cite examples of such.

The Organization argues that these positions should not have been considered vacancies under Rule 12(f) because there were bidders who could have been tested for the position, and that there was no requirement to force assign in these circumstances. It notes a ten year precedent of testing applicants to permit promotions prior to force assigning employees not working in the classification. The Carrier contends that there were no qualified applicants for the position, and that its assignments were in accordance with Rule 12(f). It asserts that a few instances where management did not strictly apply Rule 12(f) and tested applicants for positions, does not constitute a past practice, which, in any event, could not supersede clear and unambiguous contract language, citing First Division Award 20841.

Rule 12(f) provides, in pertinent part:

“If a position cannot be filled in accordance with the previous paragraphs the junior employee in the class in which the vacancy exists who is working in a lower class shall be required to accept the position. . . . Failure to accept the position will result in the forfeiture of seniority in the class in which the vacancy exists.”

There is no dispute that there were two bidders for the Assistant Foreman/Assistant Inspector positions in dispute, neither of which was previously qualified in that classification, the Carrier did not test them to determine if they were qualified, the Claimants were working in a lower class at the time and did not accept the assignments to these positions, and their names were removed from the Assistant Foreman/Assistant Inspector roster.

A careful review of the record convinces the Board that the Claimants' refusal to accept these assignments was based upon their understanding of the procedure followed in the past by the Carrier in permitting unqualified bidders the opportunity to

test and qualify for promotion into the Assistant Foreman/Assistant Inspector classification prior to force assigning roster employees presently working as Maintainers. Whether the instances cited by the Claimants constitute a past practice, it appears that the Claimants were unaware that the Carrier's testing policy does not automatically extend to the Assistant Foreman classification as it does to the Signaller and Maintainer classifications. Thus, on the basis of the particular facts in this case, despite the Carrier's proper application of the provisions of Rule 12(f), the Board believes it appropriate to reinstate the Claimants' seniority on the Assistant Foreman/Assistant Inspector roster due to their impression that a vacancy in this classification was filled the same way as vacancies in the Maintainer and Signaller classifications. However, the clear language of Rule 12(f) requires the Claimants to accept these positions in the future, if there are no qualified bidders at the time, or forfeit their seniority.

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 24th day of October, 2001.