

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35760
Docket No. SG-35697
01-3-99-3-644**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 Brother G. A. Rosso, for the opportunity to take a class and bid on an Assistant Foreman's position (Bulletin Q-045A), account Carrier violated the current Signalmen's Agreement, particularly Rule 12, when Carrier failed to allow the Claimant the opportunity to get the necessary qualifications to fill the position. Carrier File No. NEC-BRS(S)-SD-783. General Chairman's File No. RM3165-102-06-98. BRS File Case No. 11054-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.

This claim filed on December 13, 1997 protests the Carrier's refusal to allow the Claimant the opportunity to take a class to become qualified for an Assistant Foreman

position prior to the time that the posting in issue closed. The Claimant was assigned to the position of Signalman at Newark, New Jersey, at the relevant time.

The record reflects that the Claimant learned of a vacancy in an Assistant Foreman position on October 13, 1997, and contacted the Carrier's Rules Department in order to schedule himself for examination on the physical characteristics of the position's assigned territory. He was told that the one day class scheduled for October 31, 1997 was full but that such a class was available on November 21, 1997. The Assistant Foreman position in issue was posted on November 4 and closed on November 10, 1997. No bids from qualified employees were received for the position. The Claimant did not take the class on November 21, 1997.

The Carrier offers monthly one day classes on the Metropolitan Division for employees seeking to renew their physical characteristic qualifications, and employees are notified of the dates of the scheduled classes at the beginning of each month. They are also informed of the dates of other lengthier courses necessary to update their NORAC and AMT-2 qualifications. Employees are informed of the importance of keeping their qualifications up to date and of the need to make appointments early because class sizes are limited. During the processing of this claim on the property, the Carrier noted that the Claimant was not qualified to bid on the position not only due to physical characteristics, but also because he had failed to keep his NORAC and AMT-2 qualifications up to date, and that the Claimant failed to take advantage of earlier classes that would have kept up his qualifications prior to the posting in issue.

The Organization argues that the Claimant was prevented from bidding on the Assistant Foreman position in November 1997 because the Carrier denied him the opportunity to qualify in October. It notes that the Claimant did request the opportunity to take a class on October 13, 1997 but that the Carrier refused to permit this, thereby removing the possibility for him to timely qualify for the posting. The Organization also asserts that the regulation requiring re-qualification was not negotiated with the Organization and cannot be relied upon to defeat the Claimant's seniority right to this position, as he was senior to the employee assigned.

The Carrier contends that the Claimant had every opportunity throughout the year to obtain the necessary qualifications to enable him to bid on the Assistant Foreman position, but failed to meet his responsibility to take timely action. It notes the frequency of its classes and the fact that employees are notified monthly to schedule themselves early because class sizes are limited. The Carrier argues that employees must be held to their

obligation to keep up their qualifications in a timely fashion and cannot be permitted to shift the burden to the Carrier to schedule special training for them when they see a posting they wish to bid on. The Carrier asserts that it was the Claimant's inaction that prevented him from being a qualified bidder.

A careful review of the record convinces the Board that the Carrier's argument must be successful in this case. Unlike the situation in Third Division Award 35756, there are no extenuating circumstances herein or a showing that the Carrier was at least partially responsible for the Claimant not obtaining his qualifications in a timely fashion. On this Division employees are given repeated notice of the time and place where classes are offered in the various qualifications required, and the need to keep those qualifications up to date. Employees are also informed that class size is limited and that failure to schedule a class far enough in advance may result in being closed out of that class. That is exactly what happened to the Claimant in this case. Through no fault of the Carrier's, the Claimant chose to wait until he learned of the vacancy before requesting a physical characteristics class, and the class that would have taken place prior to the posting was already full at the time. The Carrier cannot be held accountable for the delay in this case. It was the Claimant's obligation to assure that his qualifications were up to date to enable him to bid on upcoming postings. His failure to do so in this case must result in the denial of his claim.

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 24th day of October, 2001.