

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36629
Docket No. SG-36050
03-3-00-3-182

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
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of R. G. Young, for payment of the difference between the rate of pay for a Lead Signalman and that of a Signal Gang Foreman commencing on January 20, 1999 and continuing until he is awarded and occupies the Signal Gang Foreman position, account Carrier violated the current Signalmen's Agreement, particularly Rules 21 (a) and 24 (a) when it assigned a junior employee to the Signal Gang Foreman position on Gang No. 1429. Carrier File No. 1180547. General Chairman's File No. 99-02-M-A. BRS File Case No. 11167-MP."

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 February 18, 1999 protests the Carrier's failure to award the temporary Signal Foreman position on Gang 1429 to the Claimant in January 1999, and its assignment of that position to a junior employee, as a violation of Rules 21(a) (Assignments) and 24(a) (Promotion), which require that bulletined positions and promotions be awarded to the senior employee with sufficient ability. It requests that the Claimant be compensated the difference in pay rate between the Lead Signalman and Signal Gang Foreman positions for the period of the claim.

The record reveals that Gang 1429 has only three members, a Foreman, a Signalman and an Assistant Signalman, and is assigned a boom truck requiring a Commercial Driver's License (CDL) to operate. The bulletin for the temporary Foreman position was posted with the requirement that the bidder hold a CDL. The Claimant was rejected because he does not have a CDL. On the property it was noted that the Assistant Signalman on the gang also did not have a CDL, although he was attempting to qualify for one, and that the Signalman had a CDL, but was in electronics school, and when he was off for any reason the gang boom truck could not move. The Carrier determined that, for operational needs, the Foreman of this gang also had to possess a CDL and the ability to operate the boom truck. The Carrier pointed out that the Claimant could never obtain a CDL under current law due to his previous driving violations, and, thus, could not even qualify for the position.

The Organization argues that there is no Agreement provision requiring a CDL for a Signal Gang Foreman position, noting that there are many Foremen who do not possess CDLs and the usual practice is that they do not operate trucks. It contends that the Carrier is attempting to place a qualification on this position that is not applied to other Foremen positions. The Organization avers that the Claimant had acted as a Foreman and that as Lead Signalman, he was required to pass the same qualifying exam as a Foreman. The Organization asserts that the Claimant's seniority should have been recognized under Rules 21(a) and 24(a) in granting him this position.

The Carrier argues that it has the managerial right to set job qualifications, and that in order for the Organization to succeed herein, it must show that the CDL qualification for the Foreman position on Gang 1429 was arbitrary, capricious, discriminatory, unreasonable or unwarranted. The Carrier asserts that it has

shown that operational necessity requires this Signal Gang Foreman to be able to operate the boom truck and that the Claimant's failure to possess the requisite CDL disqualified him from the position. It relies upon Third Division Awards 35561, 35336, 35010, 34017, 34013, 33514, 32353, 32152 and 26295 in requesting that the claim be denied.

A careful review of the record convinces the Board that the Organization failed to establish any violation of the Agreement in this case. The Carrier has the right to establish qualifications for a job, subject to the requirements being reasonable. Third Division Awards 35010 and 34017. In this case, Gang 1429 had only three employees and a boom truck requiring a CDL to operate. The Carrier determined that the Signal Gang Foreman had to possess a CDL in order to maintain sufficient flexibility in the face of potential absences and assure that the equipment would be operating when needed. The Board finds that such qualification was reasonable. Third Division Awards 35561, 35336, 34013 and 33514. This is true despite the fact that not all Signal Gang Foremen have a similar requirement. It is undisputed that the Claimant did not possess a CDL at the time he applied for the position, and the Organization did not contest the Carrier's assertion that he was not eligible to obtain one in the future. Accordingly, the Carrier did not violate the Agreement by denying the Claimant the Signal Gang Foreman position in issue.

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 29th day of July 2003.