

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36839
Docket No. SG-36704
04-3-01-3-255

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 on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of D. T. Reale for payment of eight hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendix B-4, when on November 30, 1999 Carrier allowed a junior employee to fill a vacant position and deprived the Claimant of the opportunity to perform this work. Carrier's File No. NEC-BRS(S) - SD-874. General Chairman's File No. JY 321022-18600. BRS File Case No. 11575-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 protests the Carrier's action in calling in a junior employee to fill a second shift job vacancy of Assistant Foreman on the Philadelphia, Pennsylvania, Trouble Desk rather than the Claimant, who holds a Foreman position in the C&S Department, but has never worked the Trouble Desk, as a violation of the following provision of the Agreement:

**"APPENDIX B-4 - PROCEDURE FOR CALLING C&S
DEPARTMENT EMPLOYEES FOR TROUBLE INVOLVING
MAINTAINER'S WORK OUTSIDE THEIR REGULAR
WORKING HOURS**

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list."

The Organization argues that, as a Foreman, the Claimant is qualified to perform all duties associated with that, or the Assistant Foreman position, anywhere on the system, was available for the assignment in issue, and should have been called prior to using the junior employee, relying upon the principle of seniority enunciated in Third Division Awards 30833 and 33909. The Organization submitted a copy of the call list for this assignment which contains the Claimant's name, asserting that, despite the Carrier's notation that he was not qualified, the Claimant's name properly appeared on such list above the name of the individual given the call, and he should have been called to ascertain his availability rather than bypassed by the Carrier in accord with the clear language of Appendix B-4(8), citing Third Division Awards 12632, 16573, 19695, 20687, 27181, and 31240. The Organization asserts that the overtime rate is the appropriate compensation for this violation, relying on Third Division Award 22569.

The Carrier contends that the Claimant was not qualified to fill a vacancy on the CETC Trouble Desk as he has never held a position there, and unique skills are required for such positions. It notes that the call out list submitted by the Organization was just a list of employees holding seniority within the classification, and it clearly indicated that the Claimant was not qualified to hold a position on the

Trouble Desk. The Carrier asserts that there is a separate call out list for the Trouble Desk listing only individuals qualified to be called for such positions, in accordance with Appendix B-4(5), and the Claimant is not on such list. On the property the Carrier pointed to a practice utilized by it since the call out Agreement was signed in 1986 where an experienced Trouble Desk Foreman is assigned to train all new applicants awarded a position on the Trouble Desk, and offered the Claimant the opportunity to apply or post for a position on the Trouble Desk in order to acquire the skills necessary to fill a vacancy there. The Carrier argues that it complied with its call out responsibilities under Appendix B-4(5), that the Organization failed to meet its burden of proving a violation, Third Division Awards 20356 and 28782, and that its excessive claim should be dismissed. Public Law Board No. 4549, Award 1.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Appendix B-4 in this case. While the Organization alleged that the Claimant was qualified to be called for an Assistant Foreman position on the Trouble Desk, it did not dispute the Carrier's evidence that special skills are required to perform work on the Trouble Desk, the Claimant has never worked in that area and was unfamiliar with the job requirements, the Claimant was offered an opportunity to post onto a position and be trained in such skills but apparently did not do so, a separate call out list was maintained for the Trouble Desk and utilized to fill vacancies under the language of Appendix B-4(5) and the Claimant was not on such list. These undisputed facts negate any violation of Appendix B-4 on the Carrier's part by its assignment of a qualified, albeit less senior, employee to the vacancy in issue.

AWARD

Claim denied.

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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 28th day of January 2004.