

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37012
Docket No. SG-36854
04-3-01-3-401

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Grand Trunk Western Railroad Company, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad (GTW):

Continuing claim on behalf of Robert A. Feasel for payment of the difference in pay between his present position and that of Signal Foreman beginning on June 1, 2000, and continuing for the term of the violation. Carrier should also be required to assign the Claimant to the position of Signal Foreman as advertised on Bulletin No. 3-A. Account Carrier violated the current Signalmen's Agreement, particularly Rules 35 and 37 when on June 1, 2000, Carrier awarded the position to a junior employee. Carrier's File No. 8390-1-127. General Chairman's File No. 00-42-GTW. BRS File Case No. 11675-GTW.”

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.

On July 9, 1998, the Claimant voluntarily entered into an agreement with the Carrier in which he agreed to waive an Investigation and to accept discipline of disqualifying himself from holding a territory position and agreed to remain on position under supervisory authority until revoked by the Signal Department Supervisor. Moreover, he acknowledged in the agreement that he so agreed after having consulted a representative of the Organization. On or about June 1, 2000 the Claimant sought assignment to a Signal Foreman position. The Carrier refused to assign him and instead assigned a junior employee. At the time, his agreement signed in 1998 had not yet been revoked.

The governing Rule in this dispute is Rule 35. It clearly requires that an employee seeking a promotion must be able to perform the job in question. In this instance, the Claimant was not able because he had voluntarily disqualified himself from holding any position that was not under supervisory authority. Because the position in question was one such position, the Claimant was not able and therefore, despite his seniority, the Carrier properly denied him the Signal Foreman position in question.

The Organization also relies on Rule 37. However, that Rule does not apply because on its face it applies only to those employees who have accepted a promotion. As noted above, the Claimant was not able, was not offered the promotion, and, therefore, did not accept the promotion.

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 18th day of May 2004.