

****CORRECTED****

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37898
Docket No. SG-36831
06-3-01-3-365**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(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 Company:

Continuing claim on behalf of D. A. Egli for payment of the difference between the rate of Assistant Signalman and Assistant Foreman plus any lost overtime accrued on the Assistant Foreman’s position effective April 20, 2000, and continuing for the term of the violation. Carrier should also be required to assign the Claimant to one of the positions of Assistant Foreman as advertised on Bulletin No. 7 dated April 20, 2000. Carrier should also be required to pay the Claimant \$20.00 per day for each day he was not placed on the assignment. Account Carrier violated the current Signalmen’s Agreement, particularly Rules 53, 55, 80 and Appendix S, when it failed to assign the Claimant to the position in question. Carrier’s File No. 1234871. General Chairman’s File No. N53-55-081. BRS File Case No. 11628-UP.”

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.

In this dispute the Organization takes exception to the Carrier's rejection of the Claimant's bid for an Assistant Foreman position at a time when he had not yet completed his basic signal training program. The claim, submitted September 1, 2000, principally asserts a violation of Rule 53 - Assignments to New Positions or Vacancies and Rule 55 - No Valid Bids Received.

The record reflects that on April 8, 2000, the Claimant submitted his application for several different Assistant Foreman positions advertised for bid. On April 20, 2000, the Carrier announced that there had been "No Qualified Bids Received" on those positions.

On the Claimant's behalf the Organization asserts that as "... the available senior assistant signalman with a minimum of one year of signal service," he should have been awarded one of the bulletined jobs.

In response, the Carrier states that pursuant to the specific language of Rule 1, Note (a) it maintains the right to assign Assistant Signal Foremen "... with due consideration for seniority, fitness and ability..." In this instance, it says, the Claimant was not appointed because he lacked sufficient fitness and ability. Specifically, the positions applied for entail the supervising of other employees performing tasks for which the Claimant has had no training. Having never worked as a Class I employee, completed only one-half of his required training and never pre-qualified for these positions in accordance with Rule 1, the Claimant was properly found unqualified for these positions.

Careful review of the record indicates that the Carrier set forth a plausible prima facie case for disqualification. As established by plentiful Third Division

precedent, the Agreement plainly affords the Carrier latitude in making the selections at issue and does not require that it fill a supervisory position with an employee it deems to be unprepared for such work. As of June 8, 2000, the Claimant had completed only two sessions of signal school. Additionally, he failed to avail himself of the opportunities set forth in Rule 1 of the Agreement for demonstrating his qualifications by requesting to sit for the applicable test.

Finding no record evidence rebutting the Carrier's contention that the Claimant lacked the requisite fitness and ability to hold an Assistant Foreman position, we conclude that the Organization failed to meet its burden of establishing that an Agreement violation occurred.

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 22nd day of August 2006.