

****CORRECTED****

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40351
Docket No. SG-39680
10-3-NRAB-00003-060519
(06-3-519)**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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:

Claim on behalf of N. P. McAllister, for compensation for the differential between the Signalman’s rate of pay and the Electronic Technician’s rate of play including overtime, starting on August 5, 2005 and continuing until this dispute is resolved, and for the Claimant to be placed on the Electronic Technician’s position on Gang 4533, account Carrier violated the current Signalmen’s Agreement, particularly Rules 51, 52, 80 and Appendix R (Letter dated October 16, 1986), when it denied the Claimant the position of Electronic Technician as advertised in BLTN2375 on July 22, 2005. Carrier’s File No. 1433937. General Chairman’s File No. S-51, 52, 80, Appendix-R-719. BRS File Case No. 13638-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 July 22, 2005, the Carrier advertised an Electronic Technician position. Claimant N. P. McAllister bid on the position. At the time he bid, he was assigned to the position of Signalman. On August 5, 2005, the Carrier determined that no qualifying bids had been received and assigned another employee to the position beginning August 15, 2005. On September 27, 2005, the Organization filed a claim on the Claimant's behalf. In that claim, the Organization maintained that the Manager of Signal Projects had "pre-determined" the Claimant's lack of qualification without even meeting him. It pointed out that the Claimant had attended and passed all training courses the Carrier had required him to attend.

Moreover, the Organization protested that the Carrier had failed to inform the Claimant concerning why he was found unqualified for the position on which he was the sole bidder. The Organization pointed out that the Claimant's application was within the timeline specified in Rule 51 – Advertising Positions for Seniority Choice – but insisted that the Carrier did not abide by Rule 52 – Assigning Positions. Rule 52 reads as follows:

"In filling vacancies and new positions, ability being sufficient, seniority will govern. An employee transferred in the exercise of seniority rights and failing to qualify within thirty (30) working days may exercise his seniority to a vacancy or displace the junior employee on the Class '1' Roster."

The Organization contended that under Rule 52, the Carrier was obliged to allow the Claimant 30 days to qualify for the position once he had successfully bid into it. In addition, the Organization noted that the Claimant called the Manager of

Signal Projects two days after the position was listed as “no qualified bid,” and requested that he be allowed to take the ASSET test to prove his qualification. The Claimant took the test and passed it on September 16, 2005. Thus, the Organization argued, he requested the test in a timely fashion, passed it, and should have been awarded the position into which he bid.

The Carrier denied the claim by letter of November 16, 2005. In that letter the Carrier insisted that the Manager of Signal Projects had determined that the Claimant did not have the fitness and ability even to attempt to qualify for the posted position within 30 days. It pointed out that Rule 1, Note (a) provided the Carrier with the latitude it exercised in this case. Specifically, Note (a) states that certain positions, including Electronic Technician, “will be bulletined and appointments made with due consideration for seniority, fitness and ability, the management to be the judge.” The Carrier also pointed out that Rule 52 included the phrase “ability being sufficient,” to allow the Carrier to look beyond seniority should the senior bidder for a position lack the necessary basic qualifications required by a position. In its January 4, 2006 denial of the Organizations December 5, 2005 appeal, the Carrier contended that the fact that the Claimant had passed the admissions test for electrical training (ASSET) did not constitute evidence of his fitness to perform the job at issue.

The second denial was appealed and the claim was progressed on the property up to and including conference between the Parties held on March 14, 2006, after which it remained unresolved. It is properly before the Board for resolution.

The language of Rule 52 and of Rule 1, Note (a) is clear. The Carrier retains considerable discretion in determining whether an employee bidding on a job possesses the fitness and ability to be a successful bidder and, thereby, to be eligible for the 30-day trial period, once placed on the job. The Board finds no indication in this record to suggest that the Claimant possessed the necessary skills at the time he bid on the position. Further, the ASSET test he requested and passed was for admission to the training he would have needed to be eligible for a trial period; it did not establish his existing qualifications.

Notwithstanding the foregoing, the Carrier has an obligation, if not literal then ethical, to notify an employee whose bid is rejected for lack of qualification of the exact reason for that rejection. Simply marking the bid printout as "No qualifying bid received" as the Carrier did in this case, does not give the bidding employee the reason for rejection – nor does it give the employee a reasonable opportunity, where possible, to dispute the Carrier's determination and prove himself or herself qualified. The Carrier's failure to extend the Claimant that basic courtesy places the Carrier on the edge of being found to have made an arbitrary or capricious decision which, in future cases, it does at its peril.

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 1st day of March 2010.