

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41782  
Docket No. SG-42045  
13-3-NRAB-00003-120423**

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  
(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.:**

**Claim on behalf of B. Carbonneau, for the difference in the rate of pay for a Helper and that of a Signal Maintainer, for all hours worked by Mr. Elias Pantazopoulos from August 23, 2010, and continuing until this dispute is resolved, account Carrier violated the current Signalman’s Agreement, particularly Rules 5, 11 and Appendix A-1 Training Agreement, when it awarded a vacant Signal Maintainer position to the junior employee, Mr. Elias Pantazopoulos, instead of the Claimant. Carrier’s File No. BRS-SD-1149. General Chairman’s File No. 102-1102. BRS File Case No. 14701-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 dispute involves a contention that the Claimant was denied the same promotional opportunity as junior employee E. Pantazopoulos to a Signal Maintainer position. Pantazopoulos bid for, and was awarded, the position of Communications Maintainer effective August 23, 2010 based upon the Carrier's contention that he had prior communications experience, asked to, and was permitted, the opportunity to demonstrate his qualifications prior to taking and passing the Maintainer exam on August 30, 2010 and enrolled in Signal Training School in May 2011. The claim, which was filed on February 22, 2011, notes that the Claimant was found to be an unqualified bidder on a Signal Maintainer job that he had bid for on January 18, 2011, and was not afforded the opportunity to demonstrate his qualifications or to obtain the position pending his passing the Maintainer exam. The Carrier's April 27, 2011 denial asserts that if the Claimant had comparable Signal experience, he could have asked, and would have been given the opportunity, to demonstrate his qualifications, but that he had no such experience.

The Organization's appeal dated June 2, was received by the Chief Engineer on June 9, but was not denied by the Carrier until November 25, 2011. In its denial, while contesting the merits of the claim, the Carrier acknowledged that the Claimant was entitled to any loss associated with its delay in responding between August 9 and November 25, 2011, and, because the Claimant had been earning the Maintainer's rate since August 12, 2011, it agreed to compensate him the difference in pay that he received between August 9 and 11, 2011 when he attended training at the Signaller's rate of pay, and the Maintainer's rate of pay. In its February 3, 2012 appeal, the Organization sought payment of the claim as presented due to the Carrier's time limit violation, and conceded that the benchmark for calculating the Claimant's monetary loss was between January 25, 2011 (seven days after the Claimant was denied his bid position) and August 11, 2011.

The pertinent portions of Rules 11, 56 and Appendix A-1 appear below.

**"RULE 11 - QUALIFICATIONS**

- (a) Assignments to positions of . . . Maintainer . . . shall be based on ability, fitness and seniority; the ability and fitness being sufficient, seniority shall govern.

## **RULE 56 - CLAIMS AND GRIEVANCES**

- B. . . . When a grievance or claim is not allowed, the Chief Engineer C&S will [s]o notify, in writing, whoever appealed the grievance or claim (employee or his representative) within sixty (60) calendar days after the date of appeal or the date the grievance or claim was discussed (whichever is applicable) of the reason therefor. When not so notified, the claim will be allowed as presented.

## **APPENDIX A-1 - TRAINING AGREEMENT**

### **I. PARTICIPANTS**

- A. . . . Employees with previous qualifications as signalman and above may apply for positions in higher classes after demonstrating that they meet Amtrak's qualification requirements for such positions . . . ."

The Organization initially argues that the Carrier's time limit violation constitutes a fatal procedural defect requiring that the claim be allowed as presented pursuant to the clear language of Rule 56, citing Third Division Awards 27480, 27640 and 30596, stating that its procedural defect was not rectified by the payment of \$58.20 to the Claimant. It asserts that the Carrier must uniformly apply its Rules, and that the Claimant must be given the same opportunity to qualify for promotion as was given to Pantazopoulos, with seniority as the determining factor. The Organization maintains that the Carrier violated the Training Agreement by promoting an unqualified junior employee, who did not meet the prerequisites for demonstrating qualification under Part I (A) because he was not a Signalman or above inasmuch as he had never worked for a railroad previously, and not permitting the Claimant to qualify after being awarded the Signal Maintainer position that he bid for in January 2011, relying on Third Division Award 24703. In its final appeal the Organization requests not only monetary compensation, but an adjustment of seniority by placing the Claimant ahead of the junior employee on the Maintainers seniority roster.

The Carrier first contends that the Organization's procedural argument lacks merits because the time limit issue was resolved on the property by the

Claimant being made whole for any possible loss associated with its delay in responding to the Organization's appeal, relying on Third Division Award 36888. It argues that the Organization failed to meet its burden of proving a violation of the Agreement, because it did not establish that the Claimant had prior experience as a Signal Maintainer, or that he had asked to demonstrate his qualifications, which is a prerequisite for this claim, and differentiates his situation from that of Pantazopoulos. The Carrier notes that it was common practice on the Communications side for employees to demonstrate their qualifications and be awarded Maintainer positions prior to completing the Signal Training Program, and for those exams to be given on site rather than in Lancaster, Pennsylvania. It asserts that Rule 11 is inapplicable herein; stressing that it has the right to determine if an employee possesses fitness and ability before awarding a position, citing Third Division Award 35754. Finally, the Carrier notes that the remedy request is excessive, because the initial claim received on March 3, 2011, seeks compensation back to August 23, 2010, well in excess of the permitted 60-day period, and there has been no demonstration of a loss of earnings suffered by the Claimant.

A careful review of the record convinces the Board that we need not reach the merits of whether there was a violation of the Training Agreement because the Carrier's admitted violation of the time limits for denying the Organization's appeal is a valid basis to direct a remedial order in this case. Unlike the situation in on-property Third Division Award 3688 relied upon by the Carrier, the Carrier's denial was not a mere six days late, in substantial compliance with the contractual time limits, and being immediately cured by compensation to make the Claimant whole for the brief lapse in the claims processing caused by its minor delay. In this case, the Carrier's denial was dated 176 days after the appeal, or 116 days past the agreed upon 60-day time limit for response contained in Rule 56. This cannot be considered substantial compliance with the provisions for grievance processing negotiated by the parties.

Additionally, the Board is unable to accept the Carrier's contention that it cured this procedural defect by compensating the Claimant for the difference in pay received during what it believes was the 109-day lapse in claim processing, which apparently only included the period August 9, 10 and 11, 2011. While the Organization agreed that the Claimant began receiving the Maintainer's rate of pay on August 12, 2011, it asserted that the appropriate commencement of the claim period was January 25, 2011 (rather than the August 23, 2010 date found in the

claim). Rule 56 clearly states that failure to timely notify the Organization of the denial of an appeal results in allowing the claim as presented. Even if the Carrier's November 25, 2011 denial were to be found to halt its liability based on its previous failure to answer, the Carrier did not pay the claim from its commencement until that date, but only from the date when its appeal response would have been timely. The Carrier cannot gain the benefit of the time limits contained in Rule 56 for purposes of minimizing its liability, and not be held to the parties' negotiated bargain of "allowing the claim as presented" for failure to substantially comply with the time limits for claim processing contained in the Agreement. See, e.g. Third Division Awards 27640 and 30596.

Therefore, based solely on the Carrier's procedural violation and without reaching the merits of the claim, the Board finds that the Claimant is entitled to be compensated the difference in pay between the Helper's rate that he received and the Maintainer's rate of pay between January 25 and August 11, 2011, less the amount of compensation already paid for the period August 9-11, 2011.

### AWARD

Claim sustained in accordance with the Findings.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of November 2013.