

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42341
Docket No. SG-42330
16-3-NRAB-00003-130338**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Providence and Worcester Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Providence and Worcester Co.:

Claim on behalf of E. R. Barboza, for assignment to the Track Department, account Carrier violated the current Signalmen’s Agreement, particularly Article 12 - Seniority, when it refused to accept his bid on a vacant position in the Track Department and instead hired a new employee. General Chairman’s File No. WHK-62-156-1108. BRS File Case No. 14905-P&W.”

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.

At all times relevant to this dispute, the Claimant was working for the Carrier as a Signal Maintainer. The Organization represents Technicians, such as

the Claimant, in the Communications and Signal Department, as well as Technicians in the Mechanical and Maintenance of Way Departments. The employees in these departments are covered by a single Collective Bargaining Agreement and attain seniority based upon their date of hire, regardless of the department in which they work or job classification. Rates of pay for all covered employees, pursuant to Article 5 of the Agreement, are established by the Carrier and based upon an employee's "craft, responsibilities assumed, and proficiency demonstrated in the performance of duties," rather than solely on the job worked. Article 9.3 authorizes the Carrier to set annual wages above agreed upon minimums unilaterally for any individual employee.

On June 19, 2008, the Carrier posted a notice to BRS Technicians informing them that the Maintenance of Way Department was seeking to fill a vacancy for a Track Technician. The notice advised that application letters were to be sent to the Chief Engineer - Track by 3:30 P.M. on July 3, 2008. The Claimant filed a timely request to transfer to this position. The Carrier denied the Claimant's request and hired a new employee to fill the vacancy.

In arguing the Carrier violated the Parties' Agreement by failing to assign the Claimant to the vacancy, the Organization relies upon Article 12 - Seniority, which provides, in relevant part, as follows:

"12:1 Seniority rights are those described in this agreement and do not depend upon custom and practice.

12:2 Only regular employees are entitled to the seniority rights specified herein.

12:3 Promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability of employees being sufficient, seniority shall prevail. The P&W shall be the sole judge of fitness and ability but shall not act in a capricious, arbitrary or discriminatory manner in the application of this article.

* * *

12:8 For employees with comparable craft competence, priorities in accordance with seniority shall pertain in the following areas:

- (a) selection of shift,
- (b) selection of vacations,
- (c) right to employment in the event of a reduction in force,
- (d) right to return to employment in the event of a rehiring after a reduction in force.

However, if the selection of a shift shall perpetuate an extension of an inequity in the work load, as set forth in Paragraph 7:1, the shift selection must be deferred to bring about an equalization of hours worked. In the event of a dispute over craft competence, the General Chairman, or his designate shall have the right to participate in the determination of an employee's craft competence."

The Organization contends that the Claimant was seeking an assignment to the Track Technician position, and that assignments, under Article 12.3, are to be based upon seniority. It insists the Claimant possessed the fitness and ability to perform the work of this entry level position.

The Carrier counters that Article 12.3 does not contemplate the type of downward demotion in duties and responsibilities requested by the Claimant. It notes that he is highly skilled as a Signal Maintainer and performs work that requires him to meet FRA regulatory standards. Because there were two vacancies to be filled, and another Signal Maintainer had also filed a request, the Carrier explains that it could not afford to lose two of its five Signal Maintainers to have them work in entry level positions. It further argues that Article 12.8 limits the areas in which seniority pertains, and does not include transfers or demotions.

Significant in this case is the fact that the Parties do not have any provisions in their Agreement for the posting of vacancies and bidding on such vacancies. The Parties' Agreement is unusual in this industry in the manner it affords the Carrier the right to manage its workforce. In this light, the Board finds that the Organization failed to make a persuasive case that the Claimant had a contractual right to be placed on the Track Technician position when the Carrier filled it with a newly-hired employee. Because the Organization has the burden of proof, the Board cannot find that the Agreement was violated. The claim, therefore, must be denied.

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 28th day of July 2016.