

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42557  
Docket No. SG-42953  
17-3-NRAB-00003-150126**

**The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(  
(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 S.C. Anderson, for assignment to the Signal Foreman position on Gang 2904, and compensation for the difference between what he earned as a Skilled Signaller and what he would have earned if assigned to said position on November 15, 2013, account Carrier violated the Agreement, particularly Rule 40, when it assigned a junior employee to the Signal Foreman position instead of the Claimant. Carrier’s File No. 1597237. General Chairman’s File No. S-40-1355. BRS File Case No. 15106-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.**

**This is a claim, brought on behalf of Signaller Anderson, for being denied a Foreman’s job, with the commensurate rate of pay. The issue between the parties**

focuses on the language of Rule 1 versus Rule 40 of the Collective Bargaining Agreement (CBA).

Rule 1 states, in relevant part, that:

**“Position of signal inspector, signal foreman, signal shop foreman, assistant signal foreman, assistant signal shop foreman, retarder yard maintainer and electric technician will be bulletined and appointment made with due consideration for seniority, fitness and ability, the management to be the judge.”**

There is also a Note to Rule 1 which states, in relevant part, that:

**“. . . the senior applicant will, upon written request by the General Chairman to an officer designated by the Carrier within ten (10) calendar days of assignment notice, be given a standard practical, oral and written test conducted jointly by the Carrier and the General Chairman to determine if the individual can demonstrate fitness and ability to be assigned to the position. Such test will be given within ten (10) working days, unless extended by mutual agreement after request is made therefor. If the senior applicant passes the test, the employee will be assigned to the position and the junior assigned employee will revert to the position formerly held.”**

Rule 40 states that:

**“RULE 40 – ASSIGNING POSITIONS**

**A. 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 permanent vacancy or displace the junior employee on the Class 1 Roster. If no permanent vacancy exists, he may exercise his seniority to displace the junior employee (if his junior) in the same seniority class; if there is no employee junior to him in that class, he may displace an employee junior to him in the next lower seniority class in which his seniority will permit him to work.**

**B. When bidding to fill a vacancy or a new position on a zone gang or a system position, an employee's earliest continuous seniority date in the signal department (Class 2) will be utilized."**

**It is common ground that a Foreman's job was open, that the Claimant had the highest seniority for the job and that the Carrier chose someone else for the position.**

**The Organization argues that the Claimant, a 35-year employee, had passed the Foreman's exam and had never been disqualified from that position. He did bid down, but he was still a qualified Foreman. Thus, they say that Rule 40 applies. They say, further, that Rule 1 only applies to a new applicant. Under Rule 40, since seniority governs, the Claimant should have been selected for the position.**

**The Carrier disagrees. They say that Rule 1 is very specific in that it applies to Foreman (and other) positions. Thus, they say, they have the right of selection to these named positions, based upon fitness and ability. They have sole discretion in this regard. Further, they say, if the Claimant had wanted to challenge their selection, he had the ability to use the Note language. It is uncontested that he did not do so. Thus, they say, his claim must fail.**

**The Board finds that the interpretation of the Carrier is to be preferred. While Rule 40 provides general assignment rules, Rule 1 carves out special procedures for certain positions. For these positions, the Carrier has the right of selection, subject to the other terms in the Rule and Note. In this case, the other terms do not apply, and the Carrier correctly exercised the right which it held. Despite the able arguments by the Organization, in failing to challenge the selection under the provisions of the Note, the Claimant lost his right to the position, through his own inaction.**

**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 6<sup>th</sup> day of March 2017.**