

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Lloyd H. Bailer, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**INTERNATIONAL-GREAT NORTHERN RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the International-Great Northern Railroad Company—Gulf Coast Lines:

That Signalman Stewart Bryden be restored to his position as Signalman at San Antonio, Texas, with all his rights unimpaired and compensation for all time lost from his Signalman's position since December 15, 1954. [Carrier's file BRSA 1-54]

**EMPLOYEES' STATEMENT OF FACTS:** Signalman Stewart Bryden was employed as a Signalman in 1944 and performed his duties as such in a satisfactory manner until removed from the service on December 15, 1954, irrespective of his seniority and without due regard and consideration of the circumstances under which he established and accumulated his seniority.

When initially employed, the Chief Surgeon disqualified the claimant for employment on the basis of defective vision, whereupon he was given an accepted field test on December 11, 1944 with red, yellow, and green flags in daylight, and with red, yellow, and green lanterns at night, and was retained in the service of this Carrier until December 15, 1954.

When the claimant was removed from service, his General Chairman wrote Superintendent D. E. Walker (Brotherhood's Exhibit "C") protesting the removal from service and requested that the claimant be returned to service and be compensated for time lost. The protest was based upon improperly arranged field examination which was held on October 14 and 15, 1954 (Brotherhood's Exhibit "A"). The General Chairman also requested that the claimant be reexamined. Both requests were denied by the Superintendent (Brotherhood's Exhibit "D").

The subject matter was then handled further and a field examination for the claimant was arranged for and conducted on March 4, 1955. A report of this field test was furnished the General Chairman (Brotherhood's Exhibit "K"), which developed the following indisputable facts:

For equally obvious reasons the Carrier could not consistently compensate claimant at a rate of pay other than that applicable to the classification in which he would work, if he did return to service. The current monthly rate on the position in which claimant was employed at the time of his retirement is \$447.18. The current rate on position of gang signalman recently offered claimant is \$2.1675 per hour, which produces an average monthly rate of \$377.15 per month, or \$70.03 per month less than the monthly-rated position.

Carrier's previous offer to return claimant to service as a gang signalman with the restrictions placed on his activities as outlined in Carrier's letter to the General Chairman January 4, 1956 (see paragraph 27 Statement of Facts) at the rate of pay applicable to a gang signalman and, of course, without pay for time he has been out of service on disability annuity, is, in view of the General Chairman's last letter of February 4, 1956 rejecting this offer, withdrawn.

The Carrier's offer, which was prompted primarily as a result of the showing made by claimant in the last field test given him March 4, 1955, was more than should reasonably be expected in view of the showing made by claimant in the field tests given him in October, 1954. This offer did not change the situation as to claimant's physical qualifications; it only offered to place him where he would be constantly in the company of other employees who could overcome the hazard of his service.

Attention is also directed to the fact that the Employees have not at any time cited any agreement rule to support their claim, and have given no theory of agreement violation to justify it. This case deals throughout and entirely with physical requirements for service which are not just Carrier's inherent prerogative, but Carrier's responsibility. There is nothing unreasonable about these requirements, and they do not violate the agreement in any way.

For reasons abundantly shown herein the contention of Employees that claimant "be restored to his position as signalman at San Antonio, Texas, with all his rights unimpaired and compensation for all time lost from his signalman's position since December 15, 1954" is entirely inconsistent with the record, and it should, therefore, be denied.

The substance of matters contained herein has previously been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant entered Carrier's service as a Signalman in October 1944. On the basis of the physical examination given him at the time of employment, Claimant was disqualified by Carrier's Chief Surgeon on the ground of defective eyesight. The examination revealed Claimant's vision in left eye was 20/200, with correction not possible. His vision in right eye was 20/20 when corrected with lenses. The Assistant Engineer of Signals nevertheless urged that Claimant be hired, due to the prevailing shortage of personnel with signal experience such as Claimant possessed. The matter was referred to Carrier's General Manager, who granted permission to employ Claimant provided he passed a visual field test. He was given such test and passed "one hundred percent", according to the Chief Engineer's report. The field examination consisted of a daylight test with green, yellow and red flags and hand signal to be identified at distances of 800, 1400 and 2000 feet; and a night test using green, yellow, red and white lights at the same distances.

In July 1954 Claimant was given another medical examination which indicated left eye 20/200, with correction not possible; right eye 20/100, but 20/20 corrected. On the basis of these results another field test was recom-

mended for Claimant, said test being given in October 1954, with the Local Chairman present. Carrier's report indicated Claimant failed to correctly identify certain colors at particular distances up to 2000 feet in both the day and night parts of the test. By letter dated December 13, 1954 Carrier notified Claimant he was being removed from the service on the ground that he was not qualified to safely perform his duties as a Signalman. Carrier suggested he apply to the Railroad Retirement Board for an occupational disability annuity. Claimant did so, and was granted a full disability annuity January 1, 1955. In the meantime, however, Organization's General Chairman had protested Claimant's removal from service and requested that another field test be given. Said test was administered in March 1955. Claimant made all of the proper identifications in the daylight part of the test. In the night part, however, he failed to properly distinguish certain colors at distances from 1000 to 1800 feet. Both the day and night portions of this repeat test were administered in the presence of the General Chairman and the Local Chairman.

This last test served to confirm Carrier's findings with respect to the October 1954 test, insofar as Claimant's ability to distinguish lights of various colors at night is concerned. His duties as a Signalman included the operation of a motor car alone, day or night. The Organization does not contend Claimant correctly made all of the color identification in the last field test given him. It is urged, however, that his vision was not sufficiently faulty to warrant removal from his Signalman's job. During the progressing of this claim Carrier offered to restore Claimant to active service as an hourly rated gang Signalman where he would work with other employes and not be required or permitted to operate a motor car alone. The Organization made a counter proposal which Management was unwilling to accept.

The Carrier is charged with the responsibility of maintaining safe and efficient operation of its facilities. It has a heavy obligation to provide for the safety of its employes and of other persons entrusted to its care. In a matter such as the instant case, this Board should not set aside Management's judgment unless there is a showing of action that is arbitrary, capricious or evidentiary of bad faith. No such showing is made by the record before us. Thus the claim must be denied.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July, 1958.