Award No. 9802

Docket No. SG-9030

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America, on the Pennsylvania Railroad Company that:

(a) Article 3, Section 1, of the current agreement was violated when the Company returned Mr. F. P. Dukes, an Assistant Signalman, with only four basic training periods, to the Helper T. & S. class.

(b) F. P. Dukes should be returned to the Assistant Signalman's class to complete his training for the position of Mechanic in the T. & S. Department.

(c) F. P. Dukes be paid the difference between the pay he received as Helper T. & S., and the pay he would have received had he been allowed to remain on his position of Assistant Signalman.

EMPLOYES' STATEMENT OF FACTS: F. P. Dukes was regularly assigned to position of Assistant Signalman on May 26, 1953.

F. P. Dukes received the following letter from Supervisor Telegraph and Signals V. E. Wannag, under date of March 9, 1955:

"Baltimore, Maryland
March 9, 1955

Mr. F. P. Dukes, Jr.
Assistant Signalman
Baltimore, Maryland

Dear Sir:

This is to inform you that sometime in the near future, approximately thirty (30) days from this date, you will be called upon to

suming the time and taking the place which could properly have been devoted to another employe who possessed the proper qualifications and who could eventually be assigned as a Signalman or Maintainer, on the mechanic's roster. In short, to accept the Employe's contention in this case would be tantamount to depriving another employe of his training as an Assistant Signalman and at the same time depriving the Carrier of the services of a mechanic after investing considerable time and money in the training of an Assistant Signalman. It could not be argued with any degree of merit that the Carrier had ever agreed to or intended such a preposterous concept. In fact, all the principles of sound management would argue against the adoption of such a fantastic theory. In view of all the foregoing, the Carrier submits that the claim advanced by the Employes in this case should be denied for lack of merit.

III. **Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no juridiction or authority to take such action.

CONCLUSION

The Carrier has shown that its action in disqualifying the Claimant after positive evidence had been submitted showing that he was not qualified to continue as an Assistant Signalman was in accordance with the provisions of the applicable Agreement and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

OPINION OF BOARD: The claim here is based upon an agreed Joint Submission, containing the Statement of Claim and position of the parties. (See Record.)

The Organization contends that Carrier has violated the provisions of Article 3, Sections 1 and 3 of the effective Agreement between the parties, when Carrier on May 22, 1955, transferred the Claimant from a position of Assistant Signalman to a position of Helper T & S. For such reduction in classification of positions, claim is made for the difference in pay between what Claimant received had he been permitted by Carrier to continue his training period as is alleged and claimed under the provisions of Article 3, Section 1 and exception (1), also Article 3, Section 1 of the Agreement.

Carrier denies it has violated the provisions of the Agreement as contended and denies that the Claimant had shown sufficient aptitude to qualify for the position of Assistant Signalman within the period of 130 eight hour days, he was permitted to continue his training until he had completed four of his 130 eight hour day periods, at which time Carrier determined, after an examination, that Claimant did not show sufficient aptitude to qualify as a Mechanic nor would he qualify as a Signalman, Maintainer, etc., if allowed to complete the full training period prescribed consisting of four additional periods of 130 eight hour days.

Carrier argues that the Organization, by its allegations, would so restrict Carrier, that once an employe completes his first training period of 65 eight hour days, that Carrier cannot then deprive the employe from completing his full training period of eight basic periods consisting of 130 eight hour day periods as provided in Article 3, Section 1.

There is evidence in the record that Claimant could not qualify, following his examination and no objections are made by the Organization that such examination was unfair in any respect, nor did the Carrier act in an arbitrary manner in conducting the examination which was also attended by the Local Chairman.

We are called upon here to interpret the provisions of the Agreement as contended by parties. There is no dispute as to the facts before us. There is no showing in the record here, on behalf of Carrier, that the Claimant did not possess a sufficient aptitude to learn the work as provided in Article 3, Section 1 (1) as evidenced by the fact that Carrier permitted Claimant to complete the first portion of his training period consisting of 65 eight hour days of service. Since Carrier did not return Claimant to the position of Signal Helper, we can only conclude that Claimant possessed sufficient aptitude at that time to continue his training as provided by Article 3. Article 3, Section 3 makes provision for failure to qualify after completion of eight training periods of 130 eight hour days each, with overtime excluded. We can find no provision anywhere in the Agreement, which qualifies the Section above referred to, which would authorize Carrier to demote the employe before completing his second period of training for failure to show sufficient aptitude. Carrier retained such right under Article 3, Section 1 where the employe had completed the first cycle of his training. Article 3, Section 3, makes provision for employes to forfeit all seniority rights in Assistant Signalman class, where such employe has failed to qualify for promotion after completion of his eight basic periods of 130 eight hour days each. When this Rule was negotiated in the Agreement by the parties, no provision was included in Section 3 to qualify the provision by authorizing Carrier during the eight 130 day periods to demote the employes for failure to show sufficient aptitude. Such absence in the rule, places a restriction upon Carrier to now read such an interpretation into the Rule, as it here contends and as was negotiated by the parties.

Carrier has violated the Agreement as contended by the Organization and the claim should be sustained.

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 Employe involved in this dispute are respectively Carrier and Employe 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 violate the Agreement.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 2nd day of February, 1961.

DISSENT TO AWARD NO. 9802, DOCKET NO. SG-9030

Award 9802, by interpreting Article 3, Section 1, as constituting an absolute guarantee that Assistant Signalmen, after working as such in excess of 65 eight-hour days, shall be continued in service in that capacity until expiration of eight basic training periods of 130 days each, despite incompetency demonstrated by test, is palpably wrong and violative of Carrier obligations to employ safe and competent employes. For this reason we dissent.

/s/ R. A. Carroll
/s/ P. C. Carter
/s/ W. H. Castle
/s/ D. S. Dugan
/s/ J. F. Mullen