

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, and in particular Rules 701, 702, 704, 705 and 814, when it disqualified Mr. Charles Davis from the position of Signal Testman and did not afford Mr. Davis appeal hearings in accordance with the terms of the Signalmen's Agreement.

(b) The Carrier now be required to reinstate Mr. Charles Davis to the position of Signal Testman and compensate him in accordance with the provisions of Rule 814 of the Signalmen's Agreement. [Carrier's File: 135-321-56 Spl., Case No. 96 Sig.]

EMPLOYEES' STATEMENT OF FACTS: Mr. Charles Davis, the Claimant in this case, with 24 years of service in the Signal Department, was the senior applicant on Bulletin No. 36 for the position of Testman on the Chicago Terminal Division. Mr. Davis was assigned to the position on June 8, 1959, and worked the Testman position until July 6, 1959, when he was disqualified from the position by Signal Supervisor W. J. Kotwas.

In view of his being arbitrarily disqualified, Mr. Davis wrote Signal Supervisor W. J. Kotwas under date of July 10, 1959, and requested a hearing under Rule 702 of the Signalmen's Agreement. The letter read as follows:

"I wish to request an investigation on account of you disqualifying me from the position of Signal Testman.

This protest is being made under Rule 702 in accordance with Rule 701 of the Agreement between the Illinois Central Railroad Company and Signal Department Employees, represented by the Brotherhood of Railroad Signalmen of America."

Under date of July 16, 1959, Mr. J. H. Megee, Division Engineer, wrote Mr. Davis and advised him that the hearing would be held on Friday, July 24, 1959. The letter read as follows:

OPINION OF BOARD: Claimant was the senior applicant for the position of Testman on Carrier's Chicago Terminal Division and was assigned to the position by bulletin dated May 28, 1959. Claimant performed work in the Testman position for 21 days between June 8, 1959 and July 6, 1959. At the end of the qualifying period, he was notified of his disqualification effective July 6, 1959. Thereafter, Claimant exercised his seniority rights by displacing a junior employee in the seniority class from which he had been promoted in accordance with Rule 504 (a) of the controlling Agreement.

Claimant initially requested a hearing under Rule 702 of the Signalmen's Agreement, which grants an employee who considers himself unjustly treated the right to hearing and appeal, even though no discipline is involved in a dispute. A hearing was duly held on July 24, 1959, and the subsequent decision affirmed Carrier's position that Claimant was not qualified to act as a signal testman on the Chicago Terminal. Another hearing was requested on appeal to Carrier's Superintendent, which also culminated in a finding of Claimant's disqualification. A further appeal was directed to Carrier by letter dated August 29, 1959 and thereafter the instant claim was filed on October 12, 1959 by Petitioner.

In the first instance, Carrier contends that the claim is barred because Petitioner failed to comply with the Time Limit Rule of the Signalmen's Agreement, which provides that all claims or grievances must be presented in writing by or on behalf of the employee involved within 60 days from the date of the occurrence on which the claim or grievance is based. Carrier contends that the occurrence on which the claim is bottomed was the initial date of Claimant's disqualification by Carrier, and that the claim was not presented until long after the 60 day time limit had expired.

The record discloses that Claimant properly invoked the provisions contained in Section 702 of the controlling Agreement which included hearings and appeals from the Carrier's action on July 6, 1959. Carrier's final disposition of Claimant's appeal is set forth in a letter from Carrier's Superintendent to Petitioner's Local Chairman dated August 20, 1959. Therefore, the incident or occurrence from which the sixty day time limit begins to run occurred on August 20, 1959, when the Carrier notified Petitioner that Claimant's appeal had been considered and Carrier's initial findings of disqualification sustained. Thus, the claim filed on October 12, 1959 was timely, and Carrier's contention is without merit.

Petitioner contends that the initial disqualification of Claimant by Carrier was without a hearing, in violation of Rule 705 of the controlling Agreement and, therefore, a denial of Claimant's fundamental rights under said Agreement.

Rule 705 reads as follows:

"Employees will not be demoted or reduced to a lower classification or rate of pay as a disciplinary measure. Demotions or reductions shall only be made where it is clearly established that the employee is not qualified to serve in the higher class after hearings have been held, as provided for in this article."

Petitioner avers that disqualification, demotion and reduction in classification are synonymous terms as used in Rules 504 (a) and 705 and that Claimant was entitled to a hearing before disqualification by Carrier under Rule 504 (a), even though no provision for such a hearing is contained in said rule.

Carrier contends that Rule 705 is inapplicable and that Rule 504 (a) authorizes Carrier to disqualify promoted employees within 21 work days following promotion without benefit of a hearing if such action is not arbitrary and capricious.

This Board previously considered the issue now before us in Award 12523, which involved the same parties and Agreement. We held "that Rule 504 (a) was intended to provide an employee 21 days actually worked in which to qualify for a promotion. At the end of 21 days actually worked, he may be disqualified by the Carrier pursuant to Rule 504 (a) without such disqualification constituting a demotion within the meaning of Rule 705 so as to require a hearing." We find Award 12523 controlling in this case. Carrier did not violate Rule 504 (a), and Rule 705 is inapplicable. Therefore, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.

DISSENT TO AWARD 14596, DOCKET SG-12350

Patently, Rule 504 permits disqualification, but the real issue in this case was how is this disqualification achieved, that is to say, can the Carrier unilaterally decide that the promoted employee has failed to qualify or must a hearing precede the disqualification.

Based on the whole agreement Petitioner was correct in contending that disqualification, demotion and reduction in classification are synonymous terms and that Rule 705 governs. Unfortunately, the Majority in its obvious zeal to echo the holding of a previous award have rendered Rule 705 meaningless in violation of the universally accepted rule of contract construction that all provisions of a contract are to be given effect if it is possible to do so. In so doing the specific will control the general provision leaving the latter to operate in a general field not covered by the specific provision.

With respect to the previous award, namely, 12523, it seems to me the same error was committed in that case and the apparent blind following of the reasoning contained therein simply results in a compounding of the error.

G. Orndorff
Labor Member

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