



Award No. 16674
Docket No. SG-17205

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**NEW YORK CENTRAL RAILROAD
(Northern District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (New York District, Boston and Albany Division, Eastern District, Western District, Northern District, Southern District); the Cleveland Union Terminals Company; and Indiana Harbor Belt Railroad, that:

(a) Carrier violated the current Brotherhood of Railroad Signalmen's Agreement covering Retarder Technicians, Inspectors and Foremen employed in the Signal Department, particularly Rules 7, 11, and 19, when Signal Foreman F. N. Replogle was unilaterally, arbitrarily, and capriciously disqualified by the Carrier without being formally charged and afforded a hearing to establish facts pertinent to an incident which occurred on Thursday, May 19, 1966, about 11:20 A. M., while he was on duty at Van Horn Road, Trenton, Mich.

(b) Carrier be required to pay Mr. Replogle the difference in rates of pay between that of Leading Signal Maintainer and Signal Foreman, beginning May 23, 1966, and continuing until he is restored to his position of Signal Foreman. (Carrier's File: Sig. D-7.2)

OPINION OF BOARD: Claimant had been promoted to the position of Foreman on April 4, 1966. On May 19, 1966, while occupying this position, he became acutely ill. Despite this incontrovertible fact, he remained on the job, but was found sleeping by one of Carrier's officials. Carrier thereupon disqualified him on the basis of fitness and ability pursuant to the provision of Rule 11, which provides that employees assigned to positions will be given a reasonable time (not more than 90 days) in which to qualify.

Petitioner *arguendo* states that Claimant should have been given a hearing pursuant to Rule 19, captioned Discipline, and that the disqualification was arbitrary and capricious.

As we view this case, being fully cognizant of the numerous awards of this Board attesting to the fact that the determination of an employee's fit-

ness and ability is within the province of the Carrier, it is our judgment, based on what can only be described as extenuating circumstances, that Carrier's action in this case was arbitrary. We will accordingly sustain the claim.

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 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 Agreement was violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.