

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21103**
Docket Number **SG-20951**

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(Robert W. Blanchette. Richard C. Bond and John H.
(**McArthur**, Trustees-of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General **Committee of** the Brotherhood of Railroad Signalmen on the **former** Pennsylvania Railroad Company:

System Docket 651
Eastern **Region -** Philadelphia Division Case No. 135

(a) Claim that the Company violated Article 4, Section 6, 7, 8 and 20(a), Article 8, Sections 3 and 4; and Article IV, Section 1 of the Agreement of February 7, 1965, when it notified George B. Carter, Foreman **C&S**, under date of October 16, 1967 that he was disqualified as **Foreman** C&S, **effective** October 16, 1967, and forced to exercise his seniority within ten (10) days in a Lower class.

(b) Claim that George B. Carter, Foreman **C&S**, be paid the difference between the rate of Maintainer C&S-Test, the position he was forced to exercise seniority to, and the rate of Foreman C&S, for each and every work day **commencing** with October 16, 1967 and continuing until correction is made and **Mr.** Carter is restored to the position of Foreman C&S, because of the violation cited in Claim (a) above.

OPINION OF BOARD: **The** parties to this dispute have jointly stated the pertinent facts to be that on October 16, 1967 a meeting was set up by Carrier's Assistant Supervisor, C&S, with **Claimant** and his Union **Representative** to reevaluate **Claimant's position** (Foreman, C&S) **in** accordance with Article 8, Section 3(a) of their Agreement. Claimant declined to take qualification test.

The Petitioner contends that the Carrier's conduct violated Articles 4 and 8 of their June 1, 1943 Agreement and Article IV of their February 7, 1965 **Agreement**. The Carrier counters that it has the right under Agreement Article 8, Section 3(a), to require its **employees** to submit to an examination or **re-examination** of their qualifications for their positions. The Carrier also requests that we hold the present claim to be barred because of a delay in its progress caused by the **Employees**.

In the matter of timely handling, we are constrained to **frown** upon dilatory handling, but in the light of our decision on the merit of this dispute **we** do not find that the Carrier has been prejudiced.

We have carefully considered the Agreement provisions relied upon by the petitioning **Employes**, and we find that in the Light of the record presented in this case Carrier's right to re-examine the Claimant **must** be upheld. However, it appears from the record that the Claimant did not **con-****sider** himself obligated to undergo re-examination and that his declination to do so was based on that understanding. Hence, we find and direct that Claimant shall again be afforded an opportunity to take the examinations as provided in Article 8, Section **3(a)**. Inasmuch as any pay Loss suffered by the **Claimant was** because of his own act, claim **for** such loss is 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 **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 not violated.

A W A R D

Claim disposed of **in line** with Opinion and Findings.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third **Division**

ATTEST: *A.W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.