

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22455**
Docket Number **SG-22498**

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation **Company:**

On behalf of Mr. Ernest Callaway, former Assistant **Signalman** at the Sacramento Signal Shop, for a re-examination pursuant to Appendix **"B"** of the Signalmen's **Agreement** with ample **time** for **completion**, and pay for time lost if a passing grade is attained, account **not** receiving a fair and **impartial** re-examination on June 13, 1977."
/Carrierfile: SIG 133-21/

OPINION OF BOARD: **Claimant** entered Carrier's service on November 29, 1976, as a probationary Assistant Signalman under a training program covered by **Memorandum** of Agreement dated September 20, 1971, which Memorandum of Agreement has been **made** a part of **the** record. Item 3 of that Memorandum of Agreement reads:

"3. Men entering service as probationary Assistants will be required to sign a statement to the effect that they fully understand they will be required to pass progressive **examinations** for each of the four 130 eight-hour day periods of training before progressing to the **next period** or to a higher **class**. A grade of **70%** shall be considered as passing grade.

"During each 130 eight-hour training period, Assistants in training will attend a **course** of a **minimum** of 8 days of classroom instruction, which shall be uniform in application **to the various employees** taking the course for a **given training** period. Initial classroom course will be given as soon as practicable after employment; subsequent classroom courses will be scheduled in such **manner** that there will be an equal period between **courses**, so that **employees** will **have** equal

"opportunity to progress from one training period to another. Course of instruction will be given in classroom and/or signal instruction car at one or more convenient centralized locations on the system, at conclusion of which examination shall be given covering the training period. If the Assistant successfully passes the examination he will be advanced to the next following training period at that time. In the event of failure to pass, reexamination shall be given within thirty (30) days from date of such failure, on the entire examination which he previously failed. He shall be graded on the entire reexamination, using the same grade factor as used in the previous examination which he failed.

"Failure of the employee to take and pass reexamination will result in forfeiture of the employee's seniority. In such case, seniority shall be terminated not less than five (5) nor more than ten (10) days following such failure.

"An employee subject to the provisions of this Training Program Agreement who leaves the service of the Company before completion of the fourth period of training and is subsequently reemployed as a Signaller will be required to take and pass examinations not yet taken on the basis set forth in last paragraph of Section 5 of this agreement."

claimant attended training period No. 1 of the training program from May 2 through May 13, 1977, but failed the examination for this training period with a grade of 54% (70% being considered as passing grade.)

In accordance with the provisions of Section 3 of the Memorandum of Agreement, heretofore quoted, a re-examination was given to claimant on June 13, 1977. Claimant failed this examination with a grade of 68%, and, as a consequence, Carrier's Signal Engineer notified him that his service with the Carrier was terminated effective June 23, 1977.

The contention of the Petitioner is that claimant did not receive a fair and impartial re-examination on June 13, 1977 as provided for in Section 6(b) of the Memorandum of Agreement of September 20, 1971. The primary contention of the Petitioner is that during the course of the re-examination, a time limitation, not

provided for in the Agreement, was placed **upon claimant** in which to complete the **re-examination**, as a result of which he was **unable to** complete answers to all the questions **and** was **not satisfied** with all the **answers** he had **given** at the **time** he turned in the test.

The officers who conducted the re-examination deny that **any specific** time limit was placed on claimant for completion of the re-examination.

From our review of the entire record, including the statements of those conducting the **re-examination**, we conclude that claimant reasonably could have understood that a time **limit** was set for completion of the re-examination, and which could have had an effect on the outcome.

We will award:

- (1) That claimant be given an opportunity to **take** another examination, provided he does so within sixty days from the date of this Award.
- (2) That the claim for pay for time lost **is** denied.

This award is restricted to the **particular** facts in **this** case and is not **to** be considered as a precedent in cases involving similar circumstances.

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

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That the agreement was violated to the extent shown in
Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and
Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.

