

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24347
Docket Number SG-24272

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On Dec. 14, 1979 the carrier violated the current Signalmen's Agreement, in particular Rule 56 and Rule 60 (revised) when Mr. G. F. Maybee issued a letter to Mr. J. Marshall, Signalmen in BUC Crew, terminating his employment and removing his seniority in the Signal Department.

(b) Carrier now be required to reinstate Mr. Marshall to his former position of signalman, with all seniority and all other rights unimpaired, compensate him for any lost wages end/or differential between wages earned in other employment and what he would have earned had he not been terminated, and all expenses incurred since unjustly held from service.

Claim is allowable under Article V of the August 15, 1954 Agreement (c) because Mr. Maybee did not repond within 60 days of the Local Chairman's initial claim of February 11, 1980." (Carrier file: 79-3-146)

OPINION OF BOARD: By letter dated December 14, 1979 Claimant, Mr. J. Marshall with seniority date of September 6, 1977 received notice of termination. Claimant failed to pass an examination (which is not in dispute) for the second time in alleged violation of Paragraph 9 of the Memorandum of Agreement dated June 8, 1972 between the Brotherhood of Railroad Signalmen and the Carrier.

On February 11, 1980 the Organization initiated a claim on behalf of Claimant on the grounds that the Carrier had violated current Agreement Rules 56 and 60 (revised). Then by letter dated June 14, 1980 the Organization invoked Article V of the current Agreement since it allegedly had not received a response to its February 11, 1980 claim. Article V stipulates that a claim should be "allowed as presented" if the Carrier does not disallow it within 60 days of the date of filing. On June 27, 1980 Carrier responded that a denial letter had been mailed on March 25, 1980. With respect to this procedural issue this Board will but cite, which it does with favor, the precedent established in Third Division Award 22531 which dealt with a similar type of situation. That Award states, in pertinent part:

"(H)ere, the parties have followed the practice of using the regular mail. Carrier has established that it mailed its letter of denial in a timely fashion. Carrier did all it could do under the system jointly chosen by the parties. To

hold it responsible for the failure of the postal system would be unrealistic.

Further, **in** the words of Second Division Award 8215, "(This) **Board** believes that good labor relations between the parties is built **upon** trust and respect for the word of the other side and we admonish both sides to so view their dealings with each other".

With respect to the merits of this case the Board notes that the Organization inappropriately cites Rule 60 of the current Agreement which deals with discipline **whereas** this case centers on the self-executing provisions of Paragraph 9 of the Memorandum of Agreement dated June 8, 1972. Rule 56 which is also cited by the Organization and which **deals** with Opportunity to Qualify is so stated **in** the **same** current Agreement is a general rule. This Board rules, however, that special rules attached as Appendices to collective bargaining Agreements, or in this case under the **classification** of a Memorandum of Agreement which regulate special (and often unique) **circumstances**, take precedence over **more** general rules covered by collective bargaining contracts (Second Division Award 9404). Special rules, by definition, represent **an** agreed upon procedure by labor and **management** to cover special conditions such as **appropriate** training programs.

It is the **contention** of the **Organization** that **Claimant** was awarded the position of Signaller on May 15, 1979 and was required to **perform** Signaller's duties for 7 months and was thus exempt from the Memorandum of Agreement requirements. If **in fact** however the Memorandum of Agreement applies only to **Signal Helpers** and Assistant **Signal Maintainers**, and not to those who have **already** been promoted to the position of Signaller, as the **Organization** states, the question arises as to **why** Claimant took the examination **at** all **in** accordance with Paragraphs 8, 9 **seq.** of the **same** Memorandum of Agreement? The only reason which this Board can deduce is that **Claimant** himself eschewed the **narrower** interpretation which is being presented to this **Board** by his Organization and viewed the **Memorandum** as applying to himself **in** the wider sense as an "employee...", which terminology is used in the **Memorandum** in a number of places (such as **in** the opening Paragraph and in Paragraph 9), until he received notice that his examination results were insufficient for him to retain his **position as** a Signaller.

This Board is **sensitive** to the fact that a close reading of the **Memorandum** of Agreement **permits** different possible interpretations. It does not **serve as** solution to this issue, however, to have a **Claimant** interpret the **Memorandum** of Agreement in **one way** by his actions, and because of **examination failure**, solicit his **Organization** to **argue** before this **Board** a contrary **interpretation**. This does not serve to clarify, but only obscures the central issue of the **Memorandum of Agreement's** real meaning.

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; end

That the Agreement was not **violated**.

A W A R D

Claim denied.

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

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **27th** day of **April 1983**.