

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28224
Docket No. MS-28485
89-3-88-3-275

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (George M. Kerrigan
(
(CSX Transportation, Inc. (former SCL)

STATEMENT OF CLAIM:

"The petitioning claimant while an employee of the CSX with a Top Rated Assistant Signalman's rating transferred his employment from the Chesapeake and Ohio division to the Seaboard Coast Line (SCL) division and while so employed was paid by SCL as an Assistant Signalman rather than as a Top Rated Assistant in violation of the then Signalman's Agreement, particularly Rule 8, Section B(4).

At all times the claimant remained an employee of the CSX and his rating and training was approved by his principal employer, CSX, and was not subject to change or diminution by an agent or subdivision of the principal employer.

Therefore, the undersigned claimant desires to submit the question of the failure of the carrier to pay him in accordance with his Top Rated Assistants to the Adjustment Board for determination."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to the employment period for which the Claimant seeks additional pay in this Claim, he had service with the Chesapeake & Ohio Railway Company as a Graduate Assistant Signalman and as a Signalman with the Baltimore & Ohio Railroad Company. He was furloughed from both positions. Thereafter, he was hired by CSX Transportation, Inc. (formerly Seaboard Coast Line Railroad) on March 23, 1987, as an Assistant Signalman, in which he served until October 22, 1987. He was paid according to the applicable wage schedule, starting at the lowest point in the wage progression.

The Claimant argues that, in view of his previous training and experience with other properties now owned by the Carrier, he should have been

paid at the highest rate for Assistant Signalman. The Claimant notes he completed the required training program in February, 1985, and cites Rule No. 8, Section B (4).

Rule 8, Section B reads as follows:

"SECTION B - New Employees

1. On or after March 1, 1975, applicants will be employed as assistants. The Carrier may, at any time during the first sixty calendar days, reject an application for employment and remove the employee from service. An assistant retained in the service following the sixty (60) day probationary period will be required to enter the training program and comply with the provisions pertaining thereto as hereinafter outlined.

2. Upon entering service, these assistants will be required to sign a statement to the effect that they fully understand the requirement to enter the training program and that they will comply with all provisions contained in this Rule 8.

* * * *

4. Upon successfully completing all courses and examinations of the training program, an assistant must bid for and except promotion to a permanent bulletined position in the next higher class if a vacancy or new position is open. If no position is open, the assistant will continue at the highest assistant's rate of pay until promotion becomes available. If there are two (2) or more assistants who have completed the training program, they will be promoted in seniority order. An employee who refuses promotion shall forfeit his seniority and rights and be considered as having resigned from service.

* * * *

6. The assistants in the training program will be paid the next higher rate of pay applicable at the time they conclude each 130 eight-hour day period of training."

The Carrier properly notes that separate Agreements have been maintained between Organizations and the railroads on which the Claimant served. The Carrier contends that Rule 8 does not apply to service on other than the former Seaboard Coast Line.


The Board concurs that the Rule does not suggest that training on a different railroad under a separate Agreement is to be applicable here. The Carrier contends that the Claimant was fully aware of his status as a "new employee" when hired in 1987. The Board has no basis to extend coverage of the Rule.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1989.