

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of D. L. Landis, for reinstatement to service and payment of time and benefits lost, plus interest on the monies, account of Carrier violated the current Signalmen's Agreement, as amended, particularly APPENDIX 'H', when it dismissed him from service for failure to pass the 2nd examination of Step 2, of the Training Agreement." Carrier file SG-65.

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.

Claimant entered Carrier's service as a pre-trainee Helper on July 8, 1985. As such, he was subject to the terms and conditions of Appendix "H" to the Rules Agreement of September 1, 1981. Appendix "H" itself is a negotiated Agreement which had been made by the parties on December 14, 1976, for the purpose of establishing an education and training program to provide the Carrier with skilled employees to perform the work of the Signal Department. Appendix "H" consists of more than eight single spaced pages which sets forth in considerable detail the terms and conditions of the education and training program. In this dispute, we are concerned specifically with the following portions of Appendix "H":

Section I, paragraphs A and D;
Section II, paragraphs F, G and H;
Section IV, paragraph A.

Inasmuch as Appendix "H" has been included in the Ex Parte Submissions of both parties, we will not burden this record further by restating the contents of the aforementioned Sections of the Agreement.

The chronology of events in this case indicates that, following Claimant's entry into service as a pre-trainee Helper on July 8, 1985, he was promoted to a position in the Signalman's class prior to his completion of the full training program. Subsequently, when Claimant had completed the second period of the training program on or about October 21, 1988, he was tested and failed the examination covering that Section of the training program. On November 18, 1988, Claimant was permitted to take a second examination on the material included in the second training period. He again failed to achieve a passing grade on the examination. He was thereupon notified that he had forfeited his seniority and was removed from service effective November 22, 1988. Claims and appeals on his behalf were initiated by the representative Organization and were progressed through the normal on-property grievance procedures. Failing to reach a satisfactory resolution during the on-property handling of the dispute, it has now come to this Board for final adjudication.

The Organization's position takes several approaches. It argued that Claimant had been improperly "dismissed" from service because, as a promoted Signal Maintainer, he was only required to attend classroom instruction but was exempt from the examination provisions of the Training Agreement. Petitioner further argued that Carrier had been lax in the overall implementation and application of the provisions of the training program. They also argued that the test in this instance had not been given in the office of the Supervisor nor was the Local Chairman permitted to be present during the test. The Organization continued their argument by contending that Carrier had failed to give Claimant sufficient material and tutoring to enable him to prepare for the reexamination.

Carrier submits that the Claimant entered the service subsequent to the effective date of the Agreement and therefore was subject to all of the terms and conditions of the Training Agreement. They argued that Claimant was not "dismissed" from service, but rather had resigned from the service in accordance with the provisions of the self-executing provisions of Section II, paragraph H of the Training Agreement. Carrier contended that the Organization's argument relative to an alleged lack of tutoring and material prior to the second examination has no basis in fact and is not supported by any probative evidence. Finally, Carrier points out that the Organization's argument relative to the location of the examination and the absence of the Local Chairman are completely new contentions which had never been raised during the on-property handling of the dispute.

The case record clearly establishes that the Claimant was subject to the terms and conditions of the Training Agreement outlined in Appendix "H". The record does not contain any probative evidence to support the charge that Carrier was lax or dilatory in its application of the Training Agreement. Statements of opinion are not proof. The record does support Carrier's contention that the Organization's argument relative to the place of the testing and the alleged absence of the local representative are made for the first time before this Board. As such, that argument is dismissed. The fact that the Claimant was promoted to a Signal Maintainer's position prior to his completion of the total training program does not, per se, exempt him from the examination requirements which follow the completion of the individual phases of the training program. Examinations and tests are the only legitimate way to determine if the classroom and other instruction of the trainee has produced the desired result contemplated by the Training Agreement. Nothing in the Training Agreement provides for the exemption from testing advocated by the Organization. Such an interpretation of the Training Agreement would lead to an absurd result.

We have carefully reviewed the case record; we have studied the provisions of the Training Agreement; we have weighed the arguments of the respective parties and we must conclude that Section II, paragraph H of the Training Agreement which reads:

"An employee hired after the effective date of this Agreement who fails to pass a reexamination will forfeit all seniority and he will be considered as having resigned from the service."

is applicable in this situation. The Organization has not proven a violation of any of the provisions of the Training Agreement. The Claim as presented is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.