

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29277
Docket No. SG-29642
92-3-90-3-648

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railroad:

Please accept the following claim from Local 173 Brotherhood of Railroad Signalmen on the California Division:

(a) Carrier violated the current Signalmen's Agreement particularly Appendix #7 and Rule 49 when it terminated Mr. Del Rio for failing the Carriers re-examination test of first step Student training final. The Carrier was Discriminatory in the manner in which the examination and re-examination was given which did not conform with Appendix #7 and Rule 49.

(b) Carrier should now be required to; reinstate Mr. Del Rio to his former position as Student Signalman on point signal gang at Hanford, Ca. with all rights and benefits unimpaired; compensate him for all time lost from November 10, 1989 until he is reinstated; reimburse him for any expense incurred and pay him for any time used in traveling outside regular working hours because of the Carrier's action; and clear his personal record of any reference to this matter." Gen'l. Chmn's. File No. 007-901. Carrier's File No. 14-2200-40-2. BRS Case No. 8038-ATSF.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On November 16, 1989 a claim was filed with the Division Manager of the California Division. The claim alleged that Rule 49 and Appendix 7 of the Agreement had been violated by the Carrier when the Claimant was terminated from service for failure to pass final reexamination for the first step of his student training program. The claim was denied by the Carrier on grounds the termination was proper because the Claimant had been "...afforded ample opportunity in complete compliance with the existing agreement to satisfy his educational process." The claim was appealed by the Organization up to and including the highest Carrier Officer designated to hear such before it was docketed before the Board for final adjudication.

At the time the Claimant was released from service he was a Student Signalman assigned to the Hanford, California Signal Gang. The record shows that the Claimant was instructed to report to the Student Training School in Topeka, Kansas, for two weeks of training to begin on July 17, 1989. The Claimant stated to the Carrier that he would not attend such training at the time it was scheduled since he was going to be on vacation. With the assistance of the Organization, however, the Claimant's vacation time was changed, in accordance with provisions of the Vacation Agreement, and arrangements were made for him to attend the training session in July 1989 after all. The Carrier made all travel arrangements for the Claimant including purchase of a plane ticket. The Claimant did not show up for class with the other students. Since his whereabouts were unknown, the Carrier contacted his wife who stated she did not know where he was. Later the Claimant himself called the Carrier with information that he was sick. There was no additional corroborating evidence provided by the Claimant about his sickness. Nor did he state he had been sick the preceding day, when he was to have traveled to Topeka by plane, nor did his wife say he was sick when the Carrier first contacted her on the first day the Claimant was to be in school. Since the Claimant missed this entry level training, and since it was not possible to schedule him for another class, he was furnished the necessary materials by the Carrier and offered whatever assistance he might have found necessary to study for the test of the first step of training. In his first attempt at the test the Claimant scored a 38%. After being given additional time to study for the test, in fact two weeks of extra time, the Claimant took the test again and a scored a 44%. To pass the test, the Claimant was required to score 75%.

According to the Carrier, which is not disputed in the record, the Topeka class was a review of previous quizzes. After the Claimant failed to attend the class the Carrier states, for the record, that the Claimant was given previous quizzes to study and there was "plenty of assistance he could have obtained if he had any questions." In a letter to the Organization after the Claimant had failed his tests, and after he was let go by the Carrier, the Claimant alleges that he was not taught pole climbing, that he was not properly taught while on the job, and that he had been discriminated against. The Board can find no evidentiary grounds for such allegations in the record. Nor

is it disputed that pole climbing was but a very small part of the tests and deficiencies in that area alone would not have led to a deficient score. The Claimant failed the tests, from all evidence, and he did so by large margins, because of his lack of familiarity with the materials contained therein. The evidence warrants conclusion that the cause for the poor test results were negligence in study habits. Perhaps the two weeks of study at Topeka would have helped the Claimant, but after the Carrier made all arrangements, including even the purchase of his plane ticket, the Claimant simply refused to cooperate except to say, without any corroborating proof whatsoever, that he was sick. Having reached conclusion that the cause of the test failures was negligence, the Board need not decide the issue, on basis of information contained in this record, whether classroom training per se is a requirement or not prior to the Carrier administering first level training program tests to Student Signalmen.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1992.