

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Elgin, Joliet and Eastern Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet and Eastern Railway Company EJ&E):

Case No. 1

Statement of Request and Claim:

(a) Request for unjust treatment hearing pursuant to Discipline and Grievance Rule 76(k) filed on behalf of Calvin D. Bradley as a result of Carrier disqualifying him as a Signal Foreman effective close of work Tuesday, March 8, 1988.

(b) Carrier violated the parties' Schedule Agreement, as amended, particularly Promotions - Basis of Rule 27 and Failure to Qualify Rule 36, when on March 8, 1988, Signal Supervisor C. S. Ridgeway, Jr. notified Claimant: 'This is to advise that you are hereby disqualified as a Signal Foreman. You may return to your former position of Leading Signalman Test Gang #105 on March 9, 1988.'

(c) As a consequence of the above violation, Carrier should now be required to compensate Claimant Calvin D. Bradley, ID 82348, for the difference between the monthly rate of Signal Foreman of \$3,048.73 and \$14.34 per hour rate of Leading Signalman for all hours, including overtime, from close of work Tuesday, March 8, 1988 forward.

(d) Inasmuch as this is a continuing violation, said monetary claim is to be retroactive from close of work March 8, 1988 and is to continue until such time as Carrier takes necessary corrective action to comply with the violation cited above. G.C. File 88-12-EJ&E. Carrier file RS-2-88/88-12-EJE.

Case No. 2

Statement of Claim:

(a) Carrier violated and continues to violate the parties' Schedule Agreement, as amended, particularly Rule 76(k) - Unjust Treatment, when following hearing held April 15, 1988, Carrier did not find that Claimant had been unjustly removed from position of Signal Foreman effective close of work Tuesday, March 8, 1988.

(b) As a consequence of such action, Carrier be required to compensate Claimant Calvin D. Bradley, ID 82348, for the difference between the monthly rate of Signal Foreman and hourly rate of Leading Signaller for all hours, including overtime, from close of work March 8, 1988 forward, including seniority rights in the Foreman's class unimpaired.

(c) Claimant further be allowed his wages as Signal Foreman for Friday, April 15, 1988 pursuant to paragraph (h) of Rule 76, since Claimant was required to lose time to attend hearing held April 15, 1988.

(d) Inasmuch as this is a continuing violation, said monetary claim is to be retroactive from close of work March 8, 1988 and is to continue until such time as Carrier takes necessary corrective action to comply with the violation cited above." G.C. file 88-12-EJ&E. Carrier file RS-2-88/88-12-EJ&E(1).

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.

By letter dated March 8, 1988, the Carrier disqualified the Claimant from his Signal Foreman position. The Organization thereafter filed a Claim on the Claimant's behalf, contending that the Carrier violated Rule 27 of the Agreement because it disqualified the Claimant without following the test procedure required by that Rule. The Carrier denied the Claim on grounds that a test was not required and no test ever has been developed or administered since Rule 27 was incorporated in the Agreement.

This Board has reviewed the record in this case and we find that although, in 1970, the Carrier negotiated the right to test employees seeking the relevant positions for the basic reason that the Carrier would then be able to screen applicants for advancement, the test was never developed and never implemented. Since 1970, applicants have been placed on the jobs and given at least thirty days to qualify without having to pass a basic test. In all those years, the Organization has never objected to promoting employees in that manner.

Despite the fact that a test was never given, and despite the fact that the Organization has never complained about not having employees tested for these types of promotions, the Organization is now complaining that the Carrier cannot disqualify an employee when that employee was not given a test. The Claimant in this case was allowed forty-four days in which to qualify for the job. The Carrier reserves the right to determine whether or not the employees possess the required abilities to qualify. The Claimant was disqualified. The fact that the Claimant was not given a test does not render the disqualification improper. The Carrier offered the Claimant an opportunity of more than thirty days to qualify for the job, and he was unable to do so.

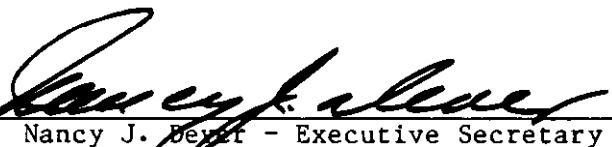
For all of the above reasons, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.