

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34201
Docket No. SG-35110
00-3-98-3-857**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of D. C. Luse for payment of the difference between the Graduate Assistant Signal Technician’s rate and the Signaller’s rate, beginning May 5, 1997, and continuing for the term of the violation, and for reinstatement to the position of Signaller, account Carrier violated the current Signalmen’s Agreement, particularly Rule 40(a), when it disqualified the Claimant from the position of Signaller. Carrier’s File No. 1108651. General Chairman’s File No. 77401427. BRS File Case No. 10885-UP.”

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 employee 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 were given due notice of hearing thereon.

After he failed to pass the Maintenance of Way Rules Examination on two occasions (March 12 and April 28, 1997), by letter dated May 5, 1997 the Claimant was disqualified from his Signalman's position. The Claimant was then reduced to a Graduate Assistant Signal Technician's rate of pay. The disqualification occurred because of a Carrier policy of disqualifying certain classifications of employees, including Signalmen, who fail to pass the Maintenance of Way Rules Examination on two attempts.

The record further shows that the Claimant took the test two more times in June 1997 and again failed to achieve a passing score. On October 20, 1997, the Claimant was allowed in the Signalman position. Ultimately, on January 14, 1998, the Claimant passed the exam. The focus of this claim is therefore limited to the period of disqualification from May 5, 1997 until October 20, 1997.

The Carrier has the right to establish qualifications for a job, subject to the requirements being reasonable. It is reasonable for the Carrier to have a requirement for Signalmen to pass the Maintenance of Way Rules Examination. Given that Signalmen can work in conjunction with Maintenance of Way employees, it is reasonable for the Carrier to expect that employees in the Signalman's classification be aware of the Rules governing Maintenance of Way Employees. Moreover, the policy allowed for two attempts to pass the test before disqualification -- which the Claimant initially did not successfully achieve -- thereby underscoring the policy's reasonableness. Given that the record shows that after his disqualification the Claimant was allowed to return to the Signalman's position and was allowed to take the test three more times after his first two failures until he passed further underscores the reasonableness of the Carrier's actions.

The Organization's argument that the treatment of the Claimant amounted to discipline entitling him to a Hearing under Rule 40 is not persuasive. Disqualification is not discipline under Rule 40. Third Division Award 29307:

"Moreover, we reject the Organization's contention that the action taken against the Claimant [disqualification] was tantamount to discipline thereby warranting the invocation of the investigation and hearing procedures of the Agreement. The vast majority of Awards considering this issue have differentiated facts such as those herein from facts

constituting discipline. Third Division Awards 11975, 14596, 20045;
Second Division Award 11064.”

The claim shall be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that
an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August, 2000.