

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35614
Docket No. SG-35581
01-3-99-3-487**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad (GTW):

Claim on behalf of V. M. Harris, for payment of all time lost and benefits and restoration of his seniority, as a result of his dismissal and for any reference to this matter to be removed from his record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 22, when it failed to provide the Claimant with the proper time to prepare for a re-examination on April 27, 1998. Carrier’s File No. 8390-1-114. General Chairman’s File No. 98-49-GTW. BRS File Case No. 10951-GTW.”

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.

It is undisputed that Rule 22 governs the Carrier's Signalmen's Apprentice Training Program. Per the Rule, the program is broken into four segments. A written test must be passed at the end of each segment. In the event of a failure to pass an exam, Rule 22 (d)(3) provides that "... re-examination shall be given within thirty (30) days from the date the trainee is advised of failure to pass." Failure to pass the retest results in dismissal.

The Claimant failed the second segment test on April 10, 1998. He also failed to pass the retest administered 17 days later on April 27, 1998. Accordingly, he was notified of his dismissal by letter dated April 29, 1998.

The claim alleges a violation of Rule 22 in that the Claimant was retested less than 30 days after notification of his first test failure. It also contends that the Claimant informed the Carrier officials that he was not prepared to retest in the 17 days allowed.

The Carrier defends saying that Rule 22 does not require that the Claimant be allowed 30 days between tests. In addition, it refuted the assertion that the Claimant told the Carrier officials he was not prepared for the retest.

The record in this matter supports the Carrier's position. Rule 22 does not require 30 days between the initial test and the retest. To the contrary, it mandates only that a retest be administered within 30 days after notification of the first test failure.

The Carrier also twice refuted the Organization's assertion that the Claimant informed the Carrier officials that he was not prepared for the retest. It was incumbent upon the Organization and the Claimant, therefore, to provide probative evidence to support the assertion. The instant record does not do so. At most, the Claimant wrote his General Chairman on May 13, 1998 regarding his dismissal. In that letter, he said only that he informed his Supervisors that the time for the retest "... seemed rather quick to me. . . ." More importantly, however, the record developed by the parties on the property does not establish that this letter was provided to the Carrier.

In light of the foregoing, we find no proper support for the claim.

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 24th day of July, 2001.