

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36554
Docket No. SG-36588
03-3-01-3-58**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company, 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 J. K. Lustig, for reinstatement to service with compensation for all time lost and benefits as a result of his dismissal from service. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 42 when it dismissed the Claimant without benefit of a fair and impartial hearing. Carrier’s File No. 8390-1-122. General Chairman’s File No. 99-98-GTW. BRS File Case No. 11523-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.

The Claimant in this case was hired by the Carrier as a Temporary Signal Helper on May 17, 1999. He was removed from service on November 18, 1999. The claim as

presented in this case alleges that the Claimant was removed from service without being given the benefit of a Hearing as required by the language of Rule 42 - Discipline. The disagreement in this case is found in the Carrier's position that Rule 2(j)(3) - Temporary Helper is controlling here and that Rule 2(j)(3) permits the hiring of temporary employees for a probationary period of 130 days.

The pertinent language of the respective Agreement Rules reads as follows:

"Rule 42 - Discipline.

An employee who has been in the service more than ninety (90) days will not be disciplined or dismissed without a fair and impartial hearing, at which he may be assisted by a duly accredited representative. He may, however, be held out of service pending such hearing, which will be held within ten (10) days from the date when charged with the offense or held from service. Prior to the investigation the employee shall be apprised in writing of the charge sufficiently in advance of the time set for investigation to permit his having reasonable opportunity to secure the presence of necessary witnesses.

An employee dissatisfied with a decision will have the right to appeal in succession up to and including the highest official designated by the Management to handle such cases, and each official must render a decision within twenty (20) days after such appeal, provided notice of such appeal is given the next higher official with copy to the official rendering the decision, within twenty (20) days thereafter. The right of an employee to be assisted by the committee or a duly accredited representative is recognized.

An employee will be given a letter stating the cause of discipline. A written transcript of all statements taken at the hearing or on appeal will be furnished on request to the employee or his representative.

If the charge against the employee is not sustained, it will be stricken from the record. If, by reason of such unsustained charge, the employee has been removed from the position held, reinstatement will be made and he will be compensated for wage loss, if any suffered by him."

“Rule 2 - Article I - Classification

(a) Foreman - Electronic Technician:

An employee assigned to work on electronic equipment and apparatus, who may be used to supervise Lead Electronic Technicians and Electronic Technicians, classified herein.

(b) Foreman:

An employee who is assigned to and whose principal duties are to supervise other employees who may, however, work with such employees.

(c) Inspector:

An employee whose duties are inspecting and testing appliances, apparatus and systems covered herein.

(d) Lead Electronic Technician:

An employee assigned to work on electronic equipment and apparatus, who may be used to supervise Electronic Technicians, classified herein.

(e) Electronic Technician:

An employee assigned to work on electronic equipment and apparatus.

(f) Lead Signalman:

An employee under the direction of a foreman working with and supervising the work of gang employees.

(g) **Lead Signal Maintainer:**

An employee working with and supervising the work of not more than six maintenance employees with or without their Assistants and/or temporary helpers.

(h) **Signalman/Signal Maintainer:**

An employee assigned to perform work generally recognized as signal, communications and/or electrical work as covered by the Scope Rule.

(i) **Assistant Signalman/Signal Maintainer:**

An employee in training for a position of Signalman/Signal Maintainer or higher rated positions working with and under the direction of a Signalman/Signal Maintainer.

(j) **Temporary Helper:**

- (1) An employee assigned to help other signal employees as indicated in Article I - Classification. A signal helper, when working alone or with two or more helpers, may perform unskilled work such as cleaning or oiling interlocker plants, bonding track, excavating and handling material.
- (2) A temporary helper employee will be paid as set forth in Addendum No. 3.
- (3) The probationary period of a temporary helper shall be for not more than 130 days. Thereafter, a temporary helper shall be reclassified as an assistant signalman."

There are two issues to be decided by the Board. The first involves the issue of whether or not the requirements of Rule 42 - Discipline are mandatory in the removal from service of temporary probationary employees. The second issue involves an

interpretation of the meaning and intent of the language found in Rule 2(j)(3) specifically the reference to 130 days.

The first issue is not new to the Board. A similar issue was addressed by the Board involving the same parties as are found in this case with the issuance of Third Division Award 35972. There the Board ruled that the Claimant therein was a Temporary Signal Helper as defined in Rule 2(j)(3) and, as such, was not entitled to the protection of Rule 42 during his probationary period. A similar conclusion was expressed by the Board in Second Division Award 12179 which held:

“There is no question that in this industry a carrier may release candidates for permanent employment during their probationary period without hearing and investigation and without detailing the basis on which the decision is predicated.”

Likewise in this case, the Claimant’s removal from service was not subject to the Hearing requirements of Rule 42.

The second issue involved in this case gives the Board some pause. The claim as originally presented alleged that the time period here involved was greater than the 130 days mentioned in Rule 2(j)(3). A computation of the calendar days involved from May 17 to and including November 18, 1999 reveals a total of 186 calendar days. However, the facts of record reveal that the Claimant in his capacity of a Temporary Signal Helper was assigned with a Signal Gang that worked four ten hour days per week during the period from May 17 to November 18, 1999.

The Carrier in its on-property denial of the claim asserted on two separate occasions that the 130 days mentioned in Rule 2(j)(3) had historically been recognized as 130 working days and not as 130 calendar days. These assertions as made by the Carrier during the on-property progression of the claim were not refuted by the Organization during the on-property handling of the dispute.

Before the Board, the Organization argued for the first time that the reference to 130 days in the Rule is clear and concise language that is not subject to any interpretation other than 130 calendar days. However, such a conclusion by the Organization is, in fact, an interpretation and is the Organization’s meaning of the reference to 130 days.

The Board does not disagree with the many decisions that have been issued relative to giving the words of an Agreement their ordinary meaning, especially where the Agreement Rule language is clear, concise and not generally subject to conflicting interpretation. In this case, however, the Agreement Rule language in question is not as clear and concise as the Organization would have the Board accept. The Organization says 130 days means 130 calendar days. The Carrier says 130 days as used in Rule 2(j)(3) has been accepted by the parties as 130 working days. Clearly, each party has its own interpretation of the meaning of the Agreement language, which demonstrates that the language is not clear, concise and not generally subject to interpretation.

As previously noted, the Carrier's assertion in this regard was not challenged by the Organization during the on-property handling of the dispute. The Board is, therefore, of the opinion that such an interpretation based on the unchallenged application by the parties constitutes the parties' intent of the Agreement language.

On the basis of this conclusion, it is apparent that the Claimant was terminated during his temporary probationary period. Therefore, the claim is 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 8th day of May 2003.