

Award No. 18125
Docket No. SG-18548

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (Pacific Lines) that:

(a) The Southern Pacific Company violated the agreement between the Company and the Employees of the Signal Department represented by the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958, including Revisions), and particularly the Memorandum of Agreement covering the Assistant Signalmen's Training Program effective September 1, 1965, specifically paragraph 3, in part provides, "assistants who fail to pass any of the progressive examinations will be given a re-examination on the portion which they failed within thirty (30) days from the date of failure". Also paragraph 6(b) in part which provides, "Examinations provided for in this agreement will be fair and impartial". Also Rule 70 of current schedule Agreement which provides for reimbursement for loss of earnings due to violation or misapplication of any portion of this segment.

(b) Mr. Gish and Mr. Williams be reinstated to service of the Signal Department of Southern Pacific Company, with all rights restored, and be compensated for lost wages which has resulted from their improper dismissal also that both men be advanced one step in the Assistant Signalmen Training Program and given study material for next step of Training Program. (Carrier's File: SIG 133-18)

EMPLOYEES' STATEMENT OF FACTS: March 27, 1968, Assistant Signalmen M. D. Gish and R. A. Williams who were working at Sacramento, California were given their 1st-2nd progressive examination under provisions of an Assistant Signalman's training program which became effective September 1, 1965. Passing score on the examination was 70 percent. Both assistants failed to make a passing score of 70 percent.

June 24, 1968, they were re-examined as required by the Assistant training program, the pertinent parts of which read as follows:

May 18, 1966, prior to its being applied in the manner now complained of, and thus without question well-known to the Organization. Prior to the submission of these claims, the Company had every right to believe that the Organization fully concurred in the manner in which re-examinations were being graded and the manner in which the agreement provisions in this respect were being interpreted.

During the time the training program agreement has been in effect, your Organization has been kept fully informed as to the manner in which it is being administered by the Company. You have been and are being furnished copies of records being kept by the Company as to the status of individual assistant signalmen under the program so that you may be fully informed. Since the program was established in 1965, a number of amendments and revisions have been made in the agreement at your informal request, to deal with problems that have arisen, including a revision of this agreement signed October 21, 1968, in which the provisions of paragraph 3 having to do with grading of re-examinations was, at your request, revised, effective November 1, 1968.

Every effort has been made and will continue to be made by the Company to administer this program in a fair and impartial manner within the framework of agreement provisions. The claim presented is without proper basis and is denied."

Copy of the General Chairman's reply to that letter, dated November 27 1968, is attached as Carrier's Exhibit K.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and circumstances in this case are parallel to those in Award 18124. Thus we adopt the opinion and findings in that Award.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

CARRIER MEMBERS' DISSENT TO AWARDS 18124, 18125

(Referee Criswell)

As Award 18124 clearly shows on its face, the controlling agreement simply reserved to these Claimants a right to be re-examined within 30 days on the portions of the examination which they failed. It is frankly admitted that each one of the Claimants was in fact given a timely re-examination on all the parts of the examination he originally failed and that each of them again failed miserably. While the passing grade was 70%, Claimant Gish scored 48.4% on the re-examination; Claimant Williams scored only 61.6% on the re-examination; and Claimant Richardson scored only 53.4%.

The claims are partially allowed on the flimsy pretext that the Claimants' rights were violated by the mere fact that in addition to being given a graded re-examination on the portions of the examination which they originally failed, Claimants were given an ungraded refresher examination on the portions which they did not originally fail. There is no dispute about the fact that Claimants were all allowed ample time to answer all questions, both graded and ungraded. There is no showing that prejudice did result or could possibly have resulted from the answering of the ungraded questions. Through some oversight on two of Carrier's Divisions, the employees who were re-examined after failing the examination were only required to answer the questions previously failed, and there is no showing that the percentage of employees who passed the second examination on those two Divisions was significantly different from the percentage who passed on the majority of Divisions where all questions were answered. As a matter of fact, Petitioner has only mentioned a single employee who passed the second examination on those two Divisions.

The questions thus presented are simply whether any agreement right of the Claimants was violated by the mere fact that they were required by Carrier to take an ungraded refresher examination on portions of the examination which they originally answered correctly; and if so, the damages properly allowable.

Significantly, the Employees cited no rule of the agreement that prohibits Carrier from giving an employee an ungraded refresher examination. In the absence of such an agreement restriction it is well established by the decisions of this Board that Carrier may require employees to take examinations.

These awards are palpably erroneous because no rule of the agreement prohibited the giving of the ungraded refresher examination. They are also erroneous because the precise procedure that was followed in giving the examination was discussed with the General Chairman and was admittedly acquiesced in by him and all employees affected during the years immediately following the adoption of the rules involved. Claimants themselves found nothing wrong with this procedure and neither they nor any other employee voiced an objection thereto until after these Claimants had failed their examination and the scent of an unjust monetary claim was in the air; Claimants should therefore be estopped from prosecuting the claims.

Finally, these awards are erroneous because Claimants failed to prove that taking the refresher in any way interfered with their efforts to achieve a passing grade on the graded questions. No causal relationship was ever established between the giving of the ungraded refresher and Claimants'

failure to pass the graded portion of the examination. Hence, even if the giving of the refresher had been a violation of the agreement, it would have been a purely technical violation which would not have caused any loss other than the actual time required to answer the ungraded questions.

The claims submitted were obviously invalid and should have been denied in their entirety.

G. L. Naylor

R. E. Black

P. C. Carter

W. B. Jones

G. C. White