

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20205  
Docket Number SG-19701

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(George P. Baker, Richard C. Bond, Jervis  
(Langdon, Jr., and Willard Wirtz, Trustees  
(of the Property of Penn Central Transportation  
(Company, Debtor

STATEMENT OF CLAIM: (a) Carrier violated the current working agreement existing between this organization and the former New York Central Railroad-Lines West, effective March 1, 1951, as amended, particularly Rule 51, in connection with a hearing held at Youngstown, Ohio, on October 23, 1970, when it disciplined Signal Maintainer H. E. Black by disqualifying below the classification of Assistant Signal Maintainer, without first affording him a proper hearing as required by paragraph (a) of that Rule, and did not apprise the organization a copy of the decision or a copy of the transcript of such hearing as referred to in paragraph (b) of that Rule.

(b) Carrier should be required to reinstate Mr. Black to his former position of Signal Maintainer, clear his personal record of any reference to this discipline, compensate him for any and all time lost because of it, beginning November 5, 1970, inclusive, and continuing; and for any time spent traveling to the hearing of October 23, 1970, and attending same, reimburse him for transportation and any other expenses incurred in connection with this matter; and pay him 1-1/2% interest per month, compounded monthly, on all money payable under this claim, with this interest to commence on November 5, 1970, and continue until the money is paid.

OPINION OF BOARD: Claimant was employed in 1955. He worked for four years as signal maintainer. The transcript of hearing on page 2, indicates that he worked as assistant maintainer prior to his assignment as maintainer. On October 12, 1970 the Assistant Supervisor, the Supervisor of Communications and Signals, and the Local Chairman met claimant on the property and went through a series of tests with him to determine whether or not he was performing his work properly. This was the first day claimant had returned to work following a 60 day suspension for improperly performing signal work which had caused flashers to become inoperative.

By form letter dated October 16, 1970, claimant was notified to attend an investigation on October 23, in connection with an occurrence, "Failure to properly perform the duties of Maintainer". In the handling on the property and at the hearing the words "trial" and "discipline" were used which led the Organization to claim that under Rule 51, the charge was not precise and that claimant was not prepared for a discipline hearing.

We are of the opinion that claimant was aware of the purpose of the hearing. The notice followed closely after the tests given on the equipment. The notice was on a form headed, TRIAL OR INVESTIGATION. On the form there appear squares indicating "A TRIAL" and "AN INVESTIGATION". An "X" appears in the square indicating "AN INVESTIGATION". Also on the form are squares indicating "CHARGE(S)" and "OCCURRENCE". An "X" appears in the square indicating "OCCURRENCE". The purpose of the investigation is stated as, "Failure to properly perform the duties of Maintainer". The letter of the Division Engineer stated that the hearing was held, "--to determine your qualification as a Maintainer". The decision was based, "--on your apparent lack of technical knowledge and inability to properly perform the duties of a Maintainer--".

The tests conducted on the equipment were testified to in detail at the hearing. A series of questions pertaining to his work were asked of the claimant and he made answers to the best of his ability. It was argued that claimant may have been nervous when he went through the tests on the day he returned to work. However, he also failed to answer correctly more than half the questions asked at the hearing eleven days later. From Rule 59 it may be concluded that the Carrier may reexamine employees as to their qualifications from time to time. At the hearing, claimant stated that he was willing to proceed. He was represented by the Local Chairman who had also been present when claimant was tested on the equipment on October 12th. We are of the opinion that claimant received a fair hearing and that substantial evidence appears in the record as to his lack of qualification as a Maintainer.

We conclude from the entire record that this is not a discipline case. It was a fair test and investigation of his ability which led to demotion. Many cases have held that a notice is sufficient if it reasonably apprises the employee of the facts under inquiry and permits him to prepare for the hearing without being surprised, Award 19745. "A great many Awards of the Third Division have reaffirmed the principle that it is the prerogative of management to judge the fitness of its employees--", Award 19144.

We are concerned, however, with the extent of the demotion. There is no evidence that claimant was not qualified as assistant signal maintainer from which he was promoted to maintainer where he served for four years. We rely on Award 12413 to determine that it was arbitrary to demote claimant below the position of assistant signal maintainer. He should be assigned the position as assistant maintainer effective as of the close of his tour of duty on November 4, 1970 and receive the difference in pay from that date.

No interest is granted, Awards 13478, 18965, 19565, 19744.

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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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement was not violated.

The extent of the demotion was arbitrary.

A W A R D

Claim disposed of as stated above.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1974.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 20205

DOCKET NO. SG-19701

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen

NAME OF CARRIER: Penn Central Transportation Company

Upon application of the Carrier involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Carrier has requested an interpretation of that part of the Award that provides: "He should be assigned the position as assistant maintainer effective as of the close of his tour of duty on November 4, 1970 and receive the difference in pay from that date."

The claim submitted requested, among other relief, that the employee be reinstated to the position of Signal Maintainer from which he had been removed by the Carrier as unqualified, and that the employee be compensated, "for any and all time lost because of it." The Award found that the employee was not qualified as a Signal Maintainer.

However, the Carrier in removing the employee decided that he was not qualified as a Maintainer and/or Assistant Maintainer effective November 4, 1970. For the reasons in the OPINION OF BOARD, it was determined that the Carrier had been arbitrary in demoting the employee as an Assistant Signal Maintainer and concluded that he should be assigned the position of Assistant Maintainer.

The Carrier states now that the employee had chosen to be furloughed when he was removed as Signal Maintainer. Therefore it was not possible to comply with the Award and no compensation is due: Also, that the employee should have exercised his contract right to another position, possibly that of Assistant Mechanic, thereby mitigating or eliminating any difference in compensation.

The Organization, in effect, argues that the Carrier must pay the employee's loss of compensation from November 5, 1970 as an Assistant Signal Maintainer regardless of the employee's action: Also, that the Carrier had an obligation to assign the employee as an Assistant Mechanic if the Carrier insists upon its interpretation of the Agreement.

The parties are reminded that the function of Interpretation is a limited one. It has been held in many prior Awards as in Interpretation No. 1 to Award No. 10878 that:

"..., the purpose---is to define or classify an award that has been made---not to make a new Award.---. Neither new matters nor new issues can be disposed of by means of an interpretation---."

The Submissions upon which the Award was made have been carefully reviewed. The finding was that, "The extent of the demotion was arbitrary." The relief granted to the employee is clear, concise and is not ambiguous.

The problem in applying the relief as stated arose from facts that were not set forth in the submissions. Neither was the problem set forth in the Claim as requiring disposition by the Board. The Claim may not at this time be extended or amended. In short, the matter of difference in compensation and assignment of the employee under the facts presented at this time, for the first time, develops new issues.

The OPINION, FINDINGS and AWARD, based on the submissions and arguments of the parties, contemplated that the employee was available for assignment on November 5, 1970 and that the position of Assistant Signal Maintainer could be assigned to him. It was assumed that when the claimant was disqualified as Signal and Assistant Signal Maintainer on November 4, 1970 that he then exercised his rights to the next best position. If that position paid less than Assistant Signal Maintainer, the claimant should be paid the difference. The assumption that the claimant exercised his contractual rights was based upon the letter from the Division Engineer to the claimant dated November 2, 1970, Brotherhood's Exhibit No. 5 of their submission of the claim. That letter not only informed the claimant of the Carrier's decision to disqualify him, after the hearing, but also notified him in the last paragraph as follows:

"Arrange to exercise your rights in accordance with the Rules and Regulations of the applicable agreement."

There was nothing in the record before the Board from which to assume or to be aware that the employee was furloughed, and if so, why.

It is the function of the Board to dispose of claims with finality but it is the duty of the Board to make findings and render awards based on the Record before it. That was done. The facts and arguments presented at this time go beyond the Record upon which the Award was rendered.

That claimant should not have been demoted below Assistant Signal Maintainer is clear. It is also clear that claimant would be entitled to the difference in compensation commencing November 5, 1970, between Assistant Signal Maintainer and a position to which he would be entitled under the Agreement and Rules if the new position carried with it a lower rate of pay. That was the intention.

Referee Irving T. Bergman who sat with the Division as a neutral member when Award No. 20205 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.