

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21103  
Docket Number SG-20951

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Robert W. Blanchette, Richard C. Bond and John H.  
(McArthur, Trustees of the Property of  
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company:

System Docket 651

Eastern Region - Philadelphia Division Case No. 135

(a) Claim that the Company violated Article 4, Section 6, 7, 8 and 20(a), Article 8, Sections 3 and 4; and Article IV, Section 1 of the Agreement of February 7, 1965, when it notified George B. Carter, Foreman C&S, under date of October 16, 1967 that he was disqualified as Foreman C&S, effective October 16, 1967, and forced to exercise his seniority within ten (10) days in a lower class.

(b) Claim that George B. Carter, Foreman C&S, be paid the difference between the rate of Maintainer C&S-Test, the position he was forced to exercise seniority to, and the rate of Foreman C&S, for each and every work day commencing with October 16, 1967 and continuing until correction is made and Mr. Carter is restored to the position of Foreman C&S, because of the violation cited in Claim (a) above.

OPINION OF BOARD: The parties to this dispute have jointly stated the pertinent facts to be that on October 16, 1967 a meeting was set up by Carrier's Assistant Supervisor, C&S, with Claimant and his Union Representative to reevaluate Claimant's position (Foreman, C&S) in accordance with Article 8, Section 3(a) of their Agreement. Claimant declined to take qualification test.

The Petitioner contends that the Carrier's conduct violated Articles 4 and 8 of their June 1, 1943 Agreement and Article IV of their February 7, 1965 Agreement. The Carrier counters that it has the right under Agreement Article 8, Section 3(a), to require its employees to submit to an examination or re-examination of their qualifications for their positions. The Carrier also requests that we hold the present claim to be barred because of a delay in its progress caused by the Employees.

In the matter of timely handling, we are constrained to frown upon dilatory handling, but in the light of our decision on the merit of this dispute we do not find that the Carrier has been prejudiced.

We have carefully considered the Agreement provisions relied upon by the petitioning Employees, and we find that in the light of the record presented in this case Carrier's right to re-examine the Claimant must be upheld. However, it appears from the record that the Claimant did not consider himself obligated to undergo re-examination and that his declination to do so was based on that understanding. Hence, we find and direct that Claimant shall again be afforded an opportunity to take the examinations as provided in Article 8, Section 3(a). Inasmuch as any pay loss suffered by the Claimant was because of his own act, claim for such loss is denied.

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 not violated.

A W A R D

Claim disposed of in line with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.