

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22455
Docket Number SG-22498

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

On behalf of Mr. Ernest Callaway, former Assistant Signalman at the Sacramento Signal Shop, for a re-examination pursuant to Appendix "B" of the Signalmen's Agreement with ample time for completion, and pay for time lost if a passing grade is attained, account not receiving a fair and impartial re-examination on June 13, 1977."
/Carrier file: SIG 133-21/

OPINION OF BOARD: Claimant entered Carrier's service on November 29, 1976, as a probationary Assistant Signalman under a training program covered by Memorandum of Agreement dated September 20, 1971, which Memorandum of Agreement has been made a part of the record. Item 3 of that Memorandum of Agreement reads:

"3. Men entering service as probationary Assistants will be required to sign a statement to the effect that they fully understand they will be required to pass progressive examinations for each of the four 130 eight-hour day periods of training before progressing to the next period or to a higher class. A grade of 70% shall be considered as passing grade.

"During each 130 eight-hour training period, Assistants in training will attend a course of a minimum of 8 days of classroom instruction, which shall be uniform in application to the various employees taking the course for a given training period. Initial classroom course will be given as soon as practicable after employment; subsequent classroom courses will be scheduled in such manner that there will be an equal period between courses, so that employees will have equal

"opportunity to progress from one training period to another. Course of instruction will be given in classroom and/or signal instruction car at one or more convenient centralized locations on the system, at conclusion of which examination shall be given covering the training period. If the Assistant successfully passes the examination he will be advanced to the next following training period at that time. In the event of failure to pass, reexamination shall be given within thirty (30) days from date of such failure, on the entire examination which he previously failed. He shall be graded on the entire reexamination, using the same grade factor as used in the previous examination which he failed.

"Failure of the employee to take and pass reexamination will result in forfeiture of the employee's seniority. In such case, seniority shall be terminated not less than five (5) nor more than ten (10) days following such failure.

"An employee subject to the provisions of this Training Program Agreement who leaves the service of the Company before completion of the fourth period of training and is subsequently reemployed as a Signaller will be required to take and pass examinations not yet taken on the basis set forth in last paragraph of Section 5 of this agreement."

Claimant attended training period No. 1 of the training program from May 2 through May 13, 1977, but failed the examination for this training period with a grade of 54% (70% being considered as passing grade.)

In accordance with the provisions of Section 3 of the Memorandum of Agreement, heretofore quoted, a re-examination was given to claimant on June 13, 1977. Claimant failed this examination with a grade of 68%, and, as a consequence, Carrier's Signal Engineer notified him that his service with the Carrier was terminated effective June 23, 1977.

The contention of the Petitioner is that claimant did not receive a fair and impartial re-examination on June 13, 1977 as provided for in Section 6(b) of the Memorandum of Agreement of September 20, 1971. The primary contention of the Petitioner is that during the course of the re-examination, a time limitation, not

provided for in the Agreement, was placed upon claimant in which to complete the re-examination, as a result of which he was unable to complete answers to all the questions and was not satisfied with all the answers he had given at the time he turned in the test.

The officers who conducted the re-examination deny that any specific time limit was placed on claimant for completion of the re-examination.

From our review of the entire record, including the statements of those conducting the re-examination, we conclude that claimant reasonably could have understood that a time limit was set for completion of the re-examination, and which could have had an effect on the outcome.

We will award:

- (1) That claimant be given an opportunity to take another examination, provided he does so within sixty days from the date of this Award.
- (2) That the claim for pay for time lost is denied.

This award is restricted to the particular facts in this case and is not to be considered as a precedent in cases involving similar circumstances.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the agreement was violated to the extent shown in
Opinion.

A W A R D

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.

