

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22520
Docket Number SG-22482

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of Assistant Signalmen J. H. Bonner, Employee No. 43932 and G. D. Davis, Employee No. 43734, for all time lost as the result of being removed from service account of failure to pass a written examination on March 28, 1977. Claimant Davis was removed from service March 28, 1977 and claimant Bonner was removed from service on March 30, 1977. This removal from service of the claimants by Carrier was a violation of APPENDIX 'M', of the current Signalmen's Agreement, effective September 1, 1976."
/Carrier file: 135-321-60 Spl. Case No. 320 Sig./

OPINION OF BOARD: The parties revised their working agreement effective September 1, 1976. Rule 4 of the Agreement sets forth in detail a two-year training program that the Company will provide for assistants. The program consists of four progressive periods of six months each, and Paragraph (d) of Rule 4 provides:

"(d) There will be an examination for each six month period, such examination will be given at the end of each period and will be restricted to material covered during that period. Examinations will be written, objective in nature, and non-discriminatory. The minimum grade required to pass an examination will be 75 per cent. Assistants will be afforded two opportunities to pass each examination. Assistants who require a second opportunity to pass an examination must take it within thirty days of being notified of the initial failure. Assistants who fail to pass the required examinations will forfeit all seniority and be considered as resigned from the service of

"the company. Assistants who pass the prescribed examinations and complete the number of lessons required for each training period will progress to the next period."

The parties also entered into Memorandum of Agreement, effective September 1, 1976, Appendix M, which reads:

"MEMORANDUM OF AGREEMENT
BETWEEN
ILLINOIS CENTRAL GULF RAILROAD COMPANY
AND
THE BROTHERHOOD OF RAILROAD SIGNALMEN

1. Assistants in service on the effective date of the new Schedule of Rules, who have served two or more years as an assistant will be promoted to and given a seniority date in the higher job classification as of the effective date of the new rules agreement. Their seniority rank in the higher job classifications will be determined by their assistant seniority rank. Such employees will forfeit their seniority as assistants.
2. Assistants in service on the effective date of the new Schedule of Rules who have served less than two years as an assistant will be required to remain and receive training as an assistant until such time as they have completed the required two years. Upon completion of their training, these assistants will lose their assistant date and will receive a seniority date in the higher job classifications retroactive to the effective date of the New Schedule of Rules. Their place on the seniority roster will be determined by the order in which they are promoted out of the training program.
3. In order to correct deficiencies in past assistant programs and to update and keep current the knowledge of those employees in the higher job classifications, the company will offer these employees, from time to time, related instructions. These employees may be

"required to attend training sessions either during or outside regular work hours and all time spent in training during or continuous with regular work hours will be paid at the straight time rate.

This agreement is effective September 1, 1976.

FOR THE
BROTHERHOOD OF RAILROAD SIGNAL-
MEN:

/s/ B. J. WOODRUFF
B. J. Woodruff
General Chairman

FOR THE
ILLINOIS CENTRAL GULF RAIL-
ROAD:

/s/ ROBERT RICHTER
Robert Richter
Director of Labor Relations

APPROVED:

/s/ W. D. BEST
Vice President "

The claimants herein had been in service as assistants less than two years, having been employed on June 28, 1976. They failed, after two opportunities to pass written examination under Rule 4(d) and were removed from the service.

The Petitioner contends that as the claimants were covered by Paragraph (2) of Appendix M, they were not subject to the examinations under Rule 4(d) of the scheduled working agreement and that Appendix M is an exception to Rule 4. It is the position of the Carrier that Appendix M did not exempt claimants from the examination requirements of Rule 4(d).

Under the Agreement in effect prior to September 1, 1976, assistants were trained for eight periods consisting of 130 eight-hour days (generally a span of 4 years), but were not required to take or pass written examinations for any of the eight training periods.

As the revised scheduled working agreement and Appendix M were effective the same date, they must be read together and the entire agreement considered as a whole. Paragraph (2) of Appendix M provides that assistants covered "will be required to remain and receive training as an assistant until such time as they have

completed the required two years," and provides for their place on the seniority roster "in the order in which they are promoted out of the training program."

It is our considered opinion that Rule 4 and Appendix M are not exclusive of one another, and that assistants covered by Paragraph (2) of Appendix M are also covered by Rule 4, which rule establishes the training program. The record shows that other assistants who had less than two years training on the effective date of the Agreement, September 1, 1976, were required to pass examinations under Rule 4(d) before progressing to the next training period.

We find that the Agreement was not violated by the Carrier in requiring examinations of claimants under Rule 4(d).

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.