

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24424
Docket Number SG-24487

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company that:

(A) The Carrier violated the rules of the Signalmen's Agreement, in particular Sections 3 and 4 of the Memorandum of Agreement dated May 7, 1975, when Mr. T. E. Brewer, Assistant Regional Engineer-S&C, terminated the services of Mr. Komosa from all service with the Norfolk and Western Railway Company effective July 24, 1980.

(B) 1. The Carrier now reinstate Mr. Komosa to the position of Signal Helper on Signal Gang #903, or to any other position to which his seniority entitles him.

2. The Carrier pay Mr. Komosa for all time lost account of his services being terminated by Mr. Brewer.

3. The Carrier make available to Mr. Komosa all other rights and benefits provided for in agreements between the Norfolk and Western Railway Company and its employees represented by the Brotherhood of Railroad Signalmen." (Carrier file: SG-STL-80-5)

OPINION OF BOARD: The pivotal question before this Board is whether Carrier violated the rules of the Signalmen's Agreement, particularly, Sections 3 and 4 of the Memorandum of Agreement, dated May 7, 1975 when it terminated Claimant from service on July 24, 1980. Carrier contends that as a condition of employment, Claimant executed an agreement on March 10, 1980 acknowledging his understanding of the requirements of Carrier's Signal Training Program and the necessity to attain the grade level specified in the May 7, 1975 Agreement. It avers that Claimant was moved up to the position of Assistant Signalman on Gang 903 on May 20, 1980 when the position became vacant and concomitantly enrolled in the regular training program pedagogically structured to broaden the Signalman's knowledge of signal circuitry and related equipment. It asserts that because he failed the first examination and later, the second examination scheduled on July 23, 1980, it was required to terminate his employment in accordance with Section 3, Paragraph b. This Section provides that:

"New employees entering service and Helpers and Assistants covered under Section 4(b) will be required to sign a statement, in the form of Attachment 'A' hereto, that they fully understand the above, plus, that following advancement to Assistant, in order to remain in Company's service, they must

pass progressive examinations for each of four 130 eight (8) hour day periods of training, overtime excluded, before progressing to the next period of Assistant's training or to mechanic. A grade of 70% will be considered a passing mark. Failure of an employee to fulfill the above provisions will result in the termination of his service."

Carrier argues that Claimant was filling the Assistant Signalman's position and receiving the position's compensatory rate, consistent with Agreement Rule 28 and was actively participating in the Signal Training Program. It maintains that it was irrelevant whether he was assigned to a bulletined Assistant Signalman's position.

Claimant argues that he had not advanced to a bulletined Assistant position pursuant to paragraphs (a) of Section 3 and paragraph (d) of Section 4 of the training Agreement, but was still a Signal Helper, albeit he was paid the higher rate. As such, he contends, forfeiture of seniority applies to the Assistant Signalman, not Signal Helpers and thus, he was terminated improperly.

In our review of this case, we agree with Carrier's position. It would indeed be difficult to conclude from a careful reading of Section 4 that Claimant did not assume the classification of an Assistant Signalman, when he filled this position on May 20, 1980 and was promptly enrolled in the Signal Training Program. He fully complied with the training agreement, which he signed on March 10, 1980 and was under no illusions as to the contingent consequences if he failed to pass the requisite examination. If he did not believe that he occupied the Assistant Signalman's position or that he was beyond the pale of the Agreement's coverage, he should have voiced his concerns at that time. By enrolling in the training program and taking the examinations, he was mindful of the downside risks if he twice failed the qualifying examination. Claimant was properly advanced to the Assistant Signalman's position and was prepared to reap the benefits if he passed the examination. He cannot argue that a failing grade is of no applicability when he signed the March 10, 1980 Training Agreement and unreservedly accepted the Agreement's self executing provisions. We will deny the claim.

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

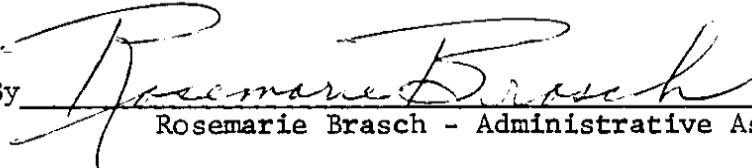
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.