

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24997
Docket Number SG-25197

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Houston Belt & Terminal Railway Company:

Carrier should be required to reinstate Yard Signal Maintainer Frank Salazar to service with seniority unimpaired and allow him payment for lost wages and benefits from February 8, 1983 until such time reinstatement is effected." (General Chairman File No. 83-9-GD)

OPINION OF BOARD: The record shows that Claimant was employed by the Carrier as an Assistant Signaller on August 27, 1979. At the time, Article II of the April 1, 1975 Signaller Training Agreement was in effect, and provided the required steps of the Progressive Training Program for all Assistant Signallers employed by the Carrier. The Training Program provided in part:

"Rule 202. Assistant shall be given a seniority date in Seniority Class 3 upon completion of a six-step progressive examination to be previously agreed upon by the Superintendent of Signal and Communications and the General Chairman. The examination will be given during regular working hours by the Superintendent of Signals and Communication, or representative, and the General Chairman, or representative. Examinations may be taken upon the request of the assistant at intervals of not less than four (4) months, but they must be taken at intervals not exceeding nine (9) months for each of the first four (4) progressive steps, and not more than six (6) months each for steps five (5) and six (6), except as provided in Rules 203 and 206 hereof. Upon passing each step, a minimum grade of 80 will be required, assistants will be paid the rate of pay stipulated in Rule 600.

* * *

Rule 209. Assistants who fail to pass an examination may take the same examination the following month (during the examination period only) and continue to do this each month until they either pass the examination or their time runs out. (This does not apply to the open period granted long service assistants.)

* * *

Rule 210. Assistants hired after January 1, 1975, who fail to pass the required examinations within the maximum times permitted under Rule 202 shall forfeit all seniority and be removed from the Carrier's service."

The Claimant initiated the six-step training program and was examined for the first period on December 29, 1979, and failed. Upon second examination on January 18, 1980, he passed. Upon October 28, 1980, he was examined on the second step and passed.

In April and May, 1981, two additional assistant signalmen were employed and enrolled in the Training Program. The hiring of the two additional Assistant Signalmen brought the total seniority roster to consist of nine Signalmen and seven Assistant Signalmen. In compliance with Rule 201 of the Training Agreement which read in part:

"Rule 201. The number of assistants shall be consistent with the requirements of the service and the apparatus to be installed and maintained. The number of assistants will not at any time be greater than one (1) assistant for each two (2) signalmen. No more than one (1) assistant shall be assigned to work with a signalman."

the Carrier stepped up two Assistant Signalmen to equalize the ratio of employees as required by the rule. The Claimant and another Assistant Signalman were stepped up to Signalman positions, while continuing their training. The Claimant was assigned to a Signal Gang; however, he discontinued his formal training of the six progressive steps, and continued only with his on-the-job training.

On June 12, 1981, the Carrier and the Organization entered into a new training program for Assistant Signalmen providing for a four-step classroom training program to be conducted by the Southern Pacific Railroad. The entire Memorandum of Agreement is set forth in the record. Sections 9 and 10 seem to be pertinent to our present dispute. They provide:

"9. During the course of their training, Assistants will be required to take examinations on matters related to the study material, discussions and hands-on work experience covered in the current training period. A grade of 80% shall be considered a minimum requirement for a passing grade. If the employee successfully passes the examination given at the conclusion of a training period, he will be advanced to the next training period. In the event of failure to pass such an examination, re-examination shall be given not less than fifteen nor more than thirty days from the date of the failure. The re-examination shall be the equivalent to the entire examination which the employee previously failed, and shall be given by the Signal Instructor or his representative and the General Chairman or his representative at the location where employee is assigned at the time. The examination and re-examination will be written, objective in nature, job related and non-discriminatory."

"10. Failure of an employee to pass a re-examination shall result in the employee's forfeiture of all seniority rights, and employment relationship with the Carrier."

The Claimant continued working in a Signal Gang as a stepped up Signalman for some five months, when he requested that he be permitted to learn the duties of a signal maintainer. He was later assigned to a signal maintainer position. Questions then arose as to Claimant's work performance. Following a conference between concerned officials of the Carrier and the

Local Chairman of the Organization, Claimant was disqualified as a Signalman on December 14, 1981. In February, 1982, further conference was held between Carrier officers and the Local Chairman concerning Claimant's failure to learn the duties and qualify as a Signalman, his failure to attend Training classes and respond to help offered by other employes and Supervisors. At that time, Claimant was offered to following opportunities:

- (1) To attend the Southern Pacific Assistant Signalman's Training School;
- (2) Take a final test to determine if he was qualified (test to be prepared by the Local Chairman and the Signal Supervisor;
- (3) If he did not elect (1) or (2), he could be transferred to another department.

On March 1, 1982, Claimant elected to be enrolled in the Southern Pacific Training School. Between April 12, 1982 and April 23, 1982, he attended the First Period classroom training and failed the test. On May 24, 1982, he was re-examined and passed. Between October 11, 1982 and October 22, 1982, Claimant attended the Second Period classes and failed the test. On November 8, 1982, he was re-examined and again failed. Under Section 10 of the Memorandum Agreement of June 12, 1981, Claimant could properly have been removed from the service at that time. However, Carrier permitted him to revert to the provisions of the former Training Program, and allowed him to take the test every 30 days during the nine-month Training Period. The Claimant was tested December 8, 1982, January 10, 1983 and February 7, 1983, and failed each test. On February 7, 1983, Claimant was notified that he had failed for the fifth time and was being removed from the seniority roster.

We have cited the details herein to show that Claimant was given every opportunity that he could expect to qualify for the work to be performed, but simply failed to do so. If there were ever a case where the Carrier went "the extra mile" to assist an employe, this was such a case.

There is no proper basis for the claim before the Board and it will be denied.

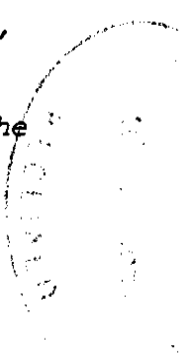
FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the 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

That the Agreement was not violated.

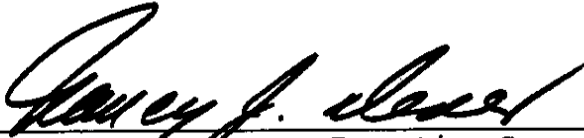


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

