

BB
SM
17

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25191
Docket Number SG-25357

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation.

(a) The Carrier violated paragraphs F, G, K and L of Section II of the Training Agreement between the parties.

(b) The Carrier should now be required to restore Trainee Wilfred Gomez to active service with all seniority and other rights and benefits unimpaired and compensate him for lost wages from the time he was dismissed (4-24-82) until date he is restored to active service. [Carrier File No. SD-1923C]

OPINION OF BOARD: The record shows that Claimant entered the service of the Carrier as Signal Helper on May 21, 1980, and was promoted to Assistant Signalman on October 29, 1980. The record contains an eight-page, single spaced, Appendix H to the Agreement, setting forth in great detail a training program for certain signal helpers and Assistant Signalmen, who would be classified as Signal Trainees.

The claim of the Organization alleges that Carrier violated certain portions of the Training Program Agreement and that Claimant was dismissed from service April 24, 1982. The Carrier denies that Claimant was dismissed on April 24, 1982, but contends that he was treated as having resigned from service when he failed the re-examination for the completion of Phase II of his training for the second time, which was in compliance with Paragraph H of Section II of the Training Agreement reading:

"H. An employee hired after the effective date of this Agreement who fails to pass a reexamination will forfeit all seniority and he will be considered as having resigned from the service."

The Organization pursues its contentions before the Board on procedural grounds, and also contends various violations of the Training Program by the Carrier, as to the necessity for the re-examination of Claimant, the timing of such re-examination, the conditions under which it was conducted, and the method of grading.

The Carrier denies any procedural violation, taking position that the claim was timely denied. We consider the Organization's procedural argument to be weak. The record shows that on July 13, 1982, the claim was denied by the Supervisor C&S, to whom it had been submitted, well within sixty days from the date submitted, May 31, 1982.

The allegations of the Organization concerning the proper application of the Training Program Agreement, the necessity for the re-examination, timing of such re-examination, method of grading, and the conditions under which the re-examination was given were all raised by the Organization in the process of handling the dispute on the property, and were adequately refuted by the Carrier. The Carrier also refutes such contentions in its Submission.

The burden of proving a violation, or violations of the Training Program Agreement, is upon the Petitioner. After a careful review of the entire record, we find that the Petitioner has not met that burden. Allegations alone do not constitute proof. The claim will be denied for lack of proof of an Agreement violation.

FINDINGS: 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: _____
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.

