

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25458
Docket Number SG-25291

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad:

Carrier violated its agreement with the Brotherhood of Railroad Signalmen and particularly Rule 56 of the agreement by failing to furnish Claimant Foyice Clark, Jr. with instructions on his position of Signal Construction Crew Foreman which resulted in claimant's disqualification as Foreman.

Claimant should be restored to Foreman status and allowed the difference in Signalman's rate of pay and Foreman's rate from May 7, 1982 until restoration is effected. [Carrier file No. SI 82-8-12 General Chairman's file No. F-82-285]

OPINION OF BOARD: Claimant was assigned to the position of Signal Construction Foreman on March 29, 1982. Within the 30-working-day period during which the Carrier may disqualify an employee, the Claimant received the following notice:

"Effective 1630 hours May 7, 1982, you are disqualified as Signal Construction Crew Foreman, Signal Gang 6A, Amory, Mississippi.

Reason for disqualification: Your lack of knowledge of signal circuits and prints."

The Organization protests that the Carrier failed to provide the proper degree of instruction to the Claimant as required by Rule 56, which reads as follows:

"RULE 56. INSTRUCTION ON POSITIONS

All employees shall be given any advice, instructions, literature and assistance needed relating to the work of the position or assignment, or the equipment to be installed, repaired, maintained, tested or inspected while qualifying for positions under this agreement. Employees qualifying for positions in Classes 1, 2, 3 and 4 shall be given all instructions on keeping time records and books, Carrier forms, ICC forms, instrument reading and any other office or field work necessary to qualify for the position, which the employee had not had an opportunity to learn before being assigned to such position."

The Organization urges that the Claimant be restored to Foreman's status.

The Carrier claims, to the contrary, that the Claimant was given extensive instruction and assistance and had previously completed the "Frisco 2 Year Signal Training Program".

The Board need not resolve the disparity in opinion as to the degree of instruction given to the Claimant, since the Claimant had an alternative path to follow, which he declined to take. Rule 42 D reads as follows:

"D. An employee who considers himself unfairly disqualified may make written request within seven (7) calendar days of date of disqualification notice that he be given a practical test conducted jointly by the Carrier and the General Chairman to determine if the individual can demonstrate qualifications to be assigned to the position. Such test will be given within five (5) calendar days after notice, unless extended by mutual agreement. If the applicant passes the test, he shall be assigned to the position."

The Claimant was offered this opportunity but did not accept it. Under these circumstances, the Claimant may not now be heard to insist on being restored to Foreman's status, in the face of the Carrier's judgment of his qualifications and his failure to demonstrate otherwise.

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

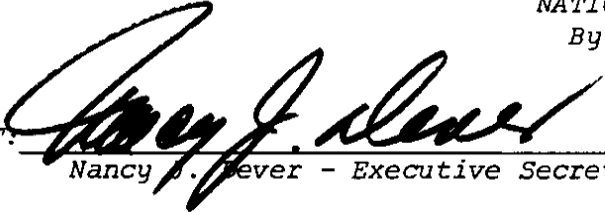
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.