

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Long Island Rail Road Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Railroad (LI):

On behalf of Asst. Signalman G. W. Volk.

Claim of Employee:

1) That the Carrier violated the Controlling Agreement effective between the Brotherhood of Railroad Signalmen Local 56 and the Long Island Railroad Company, in particular, but not limited thereto, Rule 11(d), Rule 47, Rule 29, Rule 56(d), and Rule 79, when it terminated Assistant Signalman G. W. Volk, IBM NO. 24929 from the Assistant Signalman's Training Program by letter dated April 18, 1986, received April 21, 1986 alleging that he was guilty of 'failing to show sufficient aptitude to learn.'

2) That Assistant Signalman, G. W. Volk be immediately reinstated to the Assistant Signalman's Training Program and that he be compensated for all wage losses incurred, seniority properly restored, and otherwise made whole for any and all benefit losses he may have suffered as a result of Carrier's violation of the Agreement. Carrier file SG-11-86 Volk"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was hired as a Signalman Helper on June 23, 1982, and was awarded the position of Assistant Signalman on October 13, 1982, which was the beginning of the training he needed to qualify as a Mechanic under Rule 29 of the Agreement. On April 18, 1986, Carrier informed Claimant that based on results of verbal evaluations on October 15, 1985, and April 15, 1986, Carrier was invoking the provisions of Rule 29 a(1) which provides in part:

"An Assistant Signalman failing to show sufficient aptitude to learn will be returned to the position of Signal Helper, retaining his seniority rights only as Helper."

Claimant was advised that effective April 25, 1986, he was removed from the Assistant Signalman Training Program and was to exercise his rights according to Rule 29 a(1). Claimant was subsequently furloughed from service since he did not have sufficient seniority as a Signal Helper to hold that position.

Carrier maintains that its actions were in accordance with Special Rule 29 but the Organization contends that Carrier violated Rule 47 when it dismissed Claimant without granting him an investigation. Rule 47 provides in relevant part:

"Employees who have completed their probationary period shall not be disciplined or dismissed without a fair and impartial trial
...."

The facts established below clearly show that Claimant was not being "dismissed or disciplined" when Carrier removed him from the Assistant Signalman Training Program. Claimant was returned to the Signal Helper position because Carrier had determined based on tests that he could not satisfactorily complete this program. No disciplinary motive was shown to underlie this action.

Moreover, Claimant was not dismissed. Once returned to the Signal Helper position, Claimant did not have enough seniority to maintain that position, i.e., all others on the job were more senior than he and he could not, therefore, rightfully bump them, and there were otherwise no vacant positions. Had Claimant held sufficient seniority as a Signal Helper he would have remained employed and would not have been furloughed.

The Organization further argues that the Agreement contains no provision for Carrier to conduct any verbal or practical tests other than those indicated in Appendix A: Training Program Signal Maintainer Administrative Procedures, also referred to herein as the Training Agreement, which clearly states that all tests will be written. Specifically, Section VII of the Training Agreement partially provides:

"All trainees will be required to submit to regular examinations on course material covered in current sessions. In order to ensure impartial evaluations of trainees all exams will be written."

Section XII states:

"The examinations referred to in Articles VII and VIII will be the sole basis for determining successful completion."

(Underscoring added)

Since Carrier removed Claimant from the Training Program based on the results of verbal evaluations, the Organization contends that Carrier violated the Training Agreement.

A close scrutiny of all correspondence exchanged by the parties demonstrates that this contention was not advanced implicitly or explicitly while this Claim was being handled on the property. Circular No. 1 issued by the National Railroad Adjustment Board established the procedure that:

"... the employees must clearly...set forth all relevant, argumentative facts, ..., and all data submitted in support of employees' position must affirmatively show the same to have been presented to the carrier and made part of the particular question in dispute."

The Board has consistently upheld this requirement and will do so herein. Without requiring strict adherence to this procedure the Carrier would be placed in the inequitable position of having to counter a contention, that has potential to dispose of the dispute, without being afforded the opportunity to effectively respond.

The Board will next consider whether Carrier erred when it determined Claimant did not possess sufficient aptitude to learn and removed him pursuant to Rule 29. Claimant was in his eighth and final training period when this action occurred. Carrier based its decision on the results of two verbal evaluations of Claimant which occurred on October 15, 1985, and April 15, 1986.

It is generally held that once the Carrier makes a determination as to an employee's fitness and ability to perform a job the employee is seeking, the burden then shifts to the Employees to establish that the individual has in fact the required ability to perform the job. Third Division Award 25681.

To this end, the Organization asserts that prior to October 15, 1985, Claimant passed six verbal evaluations and eleven written evaluations thus demonstrating his aptitude to learn. Further, the Organization presented proof that at the time of the dispute, Claimant had successfully completed 28 courses at the Technical Career Institute toward an Association Degree in Occupational Studies, Electronic Circuits and Systems.

The record shows, however, that although Claimant passed the previous verbal evaluations, he could not, in two attempts, pass the next one. The Carrier has maintained throughout this Claim that although Claimant has aptitude for the written portion of the classroom work, he is not able to satisfactorily apply that knowledge in a practical manner under oral examination to procedures he would follow in a given situation. The evidence presented by the Organization primarily demonstrates Claimant's classroom prowess and does not overcome the Carrier's position that Claimant's practical application of this knowledge is deficient.

Concerning the validity of the testing process, the record shows that on October 15, 1985, Claimant was evaluated in his response to a variety of questions relative to the operation of switches and relays and the demand that he name the parts of the T-20 Switch was only a portion of the evaluation. A Supervisor advised Claimant on that day that his performance during the test was poor.

During the evaluation of April 15, 1986, Claimant was again asked a mix of relevant questions. Claimant's Supervisor advised him by letter three days later that he had shown no improvement over the previous evaluation.

Although Claimant was evaluated twice in succession on mostly the same subject matter he was unable to provide answers that Management deemed satisfactory. Under the procedures of the Training Program an employee must successfully pass each stage before he qualifies for promotion to the Mechanic's class. Claimant was able to pass the first six verbal evaluations but in two attempts could not get past the seventh. The record demonstrates that the evaluations were balanced and that although given the opportunity to improve to a satisfactory level Claimant failed to do so.

Finally the Board must decide if Carrier wrongfully removed Claimant from the Training Program without first granting him the opportunity to practically demonstrate his abilities as is allowed under Rule 56(d), which states:

"An employee will not be required to take a written examination to qualify for a position. However in the event of a reasonable doubt as to his qualifications, he may be required to demonstrate his ability by a reasonable and practical test."

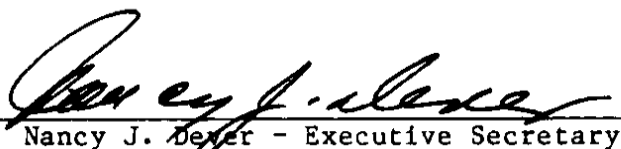
The Board finds that nothing in the record rebuts the Carrier's claim that its actions taken herein were in accordance with this Rule and with an established practice. Also, the Board notes that the language of Rule 56(d) is discretionary. It does not mandate that in every instance of reasonable doubt a practical demonstration of an employee's ability must occur. The Board does not, therefore, overrule the Carrier on the basis of its application of Rule 56(d).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1990.