

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31155
Docket No. SG-31246
95-3-93-3-320

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on The Belt Railway Company (BELT):

- A. Carrier violated the current Signalmen's Agreement, particularly Articles 1 and 8, when it placed newly hired employee E.K. Darby on a position in the Signalman's class and assigned Mr. Darby a Signalman's seniority date ahead of employees assigned to positions in the Assistant Signalman's class.
- B. Carrier should now be required to establish Mr. Darby's seniority date as the Signalman's seniority date for all employees with earlier seniority dates in the Assistant Signalman classification, and place such employees ahead of Mr. Darby in the seniority order for the Signalman's classification. Carrier's File No. 450-Signalmen. General Chairman's File No. 92-4-BRC. BRS File Case No. 9053-BELT."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In early 1992, Carrier found itself in a situation in which it had a need for a Signal Maintainer. At that point in time, Carrier had no qualified Signal Maintainers for an existing vacant position. To solve the situation, the individual named in the Statement Of Claim was, on the basis of his previous two years of work experience and service with Carrier as an Assistant Signaller, hired by Carrier on January 24, 1992, as a qualified Signaller and was assigned to the vacant Signal Maintainer position.

At the time the Carrier took this action, there were two other individuals who were then in Carrier's service as Assistant Signallers - one with a seniority date as Assistant Signaller of January 2, 1992, and the other with a seniority date as Assistant Signaller of January 16, 1992. Because of their lack of experience and training, Carrier determined that they were not qualified for the vacant Signal Maintainer position. There is no serious challenge to this particular aspect of the dispute advanced by the Organization.

The dispute as initiated and progressed by the Organization originally alleged that Carrier was in violation of the provisions of the Assistant Signallers Training Program Agreement, specifically Articles 1 and 8 thereof, when they hired an individual directly as a Signal Maintainer "ignoring this part of our contract in its entirety." The Organization continued its argument by asserting that "Carrier is prohibited by provisions of the parties' Assistant Signallers Training Program Agreement from hiring new employees in the Signallers class" This argument continued throughout the on-property handling of the dispute and was subsequently joined by the Organization's contention that Rule 25(b) of the negotiated Agreement also prohibited the action as taken by the Carrier in this case.

Throughout the handling of the dispute, Carrier insisted that the Assistant Signallers Training Program Agreement in no way restricted the Carrier from hiring journeymen Signallers; that the Training Program Agreement by its very language "excludes, by definition, those employees who have attained Signaller status;" that Rule 30 of the negotiated Agreement controls the establishment of a seniority date in a seniority class; and that the Training Program Agreement made no change in the provisions of Rule 30.

The Assistant Signallers Training Program Agreement reads in pertinent parts as follows:

"AGREEMENT BETWEEN
THE BELT RAILWAY COMPANY OF CHICAGO
AND ITS EMPLOYEES
REPRESENTED BY
THE BROTHERHOOD OF RAILROAD SIGNALMEN
ASSISTANT SIGNALMEN TRAINING PROGRAM

ARTICLE NO. 1

The training program is designed to prepare employees for positions of Signalman/Signal Maintainer or higher class positions. Individuals entering service of the Carrier will be hired as Probationary Assistants, except that individuals who have successfully completed an acceptable training program on another railroad may be employed directly as a Graduate Assistant. (An acceptable training program shall be considered as any training program to which the Brotherhood of Railroad Signalmen is by Agreement a signatory party, on any Railroad in the United States or Canada. Evidence of successful completion of such training program must be submitted by the new employee for review by the Carrier and the Organization.) After ninety (90) calendar days, Probationary Assistants (if their application for employment has not been disapproved prior to that time) shall be promoted to Assistant Signalmen/Signal Maintainer and will be enrolled in the training program and shall be subject to the following provisions.

ARTICLE NO. 2

The training program will combine home study; formal instruction and on-the-job training. Textbooks and other study material will be supplied by the Carrier at no cost to the employees. Upon successful completion of the course, such materials will become the property of the employee. Employees who fail to complete the course must return all course material to the Carrier or make payment in lieu thereof.

ARTICLE NO. 3

The formal training program for newly hired Assistants shall not be less than eighteen (18) months and shall be divided into three (3) equal periods. Employee must complete each period of training and satisfactorily pass the required examinations before being advanced into the next training period. The length of time of the training program, class capacity, and the number of sessions of classroom training, on-the-job training, and home study, will be established by the Carrier and will be reviewed with the General Chairman prior to the commencement of the program and prior to any change in the program. The minimum classroom time of training for Assistants may be subject to scheduling and participating in training programs of other Carriers.

* * *

ARTICLE NO. 8

When an employee completes the training program, he shall be given a Certificate of Graduation and the General Chairman notified. It is the intent of this training program that Assistants will have graduated from the program prior to promotion to Signaller/Signal Maintainer or higher class position. Promotion from Assistant will be in accordance with the provisions of the Schedule Agreement. An Assistant Signaller/Signal Maintainer who has successfully completed the training program and who has not already been promoted to a higher class, must accept promotion to any position bulletined in a higher class which is not filled by a qualified bidder. If promotion is refused, the employee will be removed from service and will forfeit all service and seniority rights and such employee will be considered as having resigned from the Carrier's service. Should the need arise for more employees in positions above Assistant than are available by the graduation of employees from the training program, the senior employee who has gone through training shall be given preference to promotion. In the event an employee so promoted fails to meet the requirements of the position within thirty (30) working days he shall be restored to the position of Assistant in the training program and paid the rate consistent with his seniority as Assistant. The Carrier will determine qualifications.

A trainee who is promoted to a higher position out of seniority order will establish a seniority date for all senior trainees in the Assistant Signalmen classification, who will take such date in seniority order ranking ahead of such accelerated employee prior to or after they have completed their training and have obtained a Signalman/Signal Maintainer position."

Rule 25 as referenced by the Organization reads in pertinent part as follows:

"ARTICLE 3
ASSISTANT SIGNALMEN & ASSISTANT SIGNAL MAINTAINERS

RULE 25

(a) The number of assistant signalmen and assistant signal maintainers shall be consistent with the requirements of the service and the signal apparatus to be installed and maintained; however, the number of assistant signalmen and assistant signal maintainers on the seniority district shall not at any time be greater than one assistant signalman for each three signalmen nor one assistant signal maintainer for each three signal maintainers employed on the seniority district.

(b) It is the intent of this paragraph that men will receive their training on this railroad and will be promoted to signalmen and signal maintainers rather than employing new men for such positions."

Rule 30 as referenced by Carrier reads in pertinent part as follows:

"ARTICLE 4 - SENIORITY

RULE 30

Seniority begins at the time that employee's pay starts in the seniority class in which employed, except that temporary service as defined in Rule 48 in a higher class does not establish seniority in that class."

In its presentation of the dispute to the Board, the Organization acknowledged that there was no real challenge to Carrier's right to hire experienced employees and that there was no argument relative to Carrier's rights to determine the qualifications of its employees. Rather, the Organization argued that if or when Carrier hired an experienced employee, then the provisions of the Training Program Agreement were triggered and covered the handling of and protected the seniority of those employees who were then in service and under the Training Program.

The Board has not been shown any Rule or Agreement which restricts Carrier's right to hire those employees whom it deems to be qualified for assignment to positions of Signalmen and/or Signal Maintainers. The Assistant Signalmen Training Program Agreement has a clear and meaningful opening statement therein, to wit:

"The training program is designed to prepare employees for positions of Signalman/Signal Maintainer or higher class positions." (underscore for emphasis).

Neither this language, nor the following sentence of the Agreement which indicates that "Individuals entering service of the Carrier will be hired as Probationary Assistants . . ." in any way restricts or prohibits the employment by Carrier of those employees who in Carrier's judgment and determination are fully qualified as Signalmen and/or Signal Maintainers and therefore in no need of training to prepare for such positions.

The Training Program has within its provisions two possible groups of Assistant Signalmen, namely, Probationary Assistant Signalmen and Graduate Assistant Signalmen. It is the Graduate Assistant Signalmen whose prior acceptable training is to be evidenced and submitted to the Organization. There is no requirement in the language of this Training Program Agreement for the submission of evidence of prior training for employees judged by Carrier to be fully qualified Signalmen and/or Signal Maintainers.

The Training Program Agreement also contains the mechanism for preservation of seniority among the Assistant Signalmen by providing that if a "trainee" is promoted to a higher position out of order, he, the "trainee" so promoted, "will establish a seniority date for all senior trainees . . ." Again, this Training Program Agreement has no language to include therein an employee who is hired as a journeyman mechanic and therefore in no need of becoming a "trainee." The journeyman mechanic establishes his seniority at the time his pay starts in the mechanic's seniority class in which he is employed as provided by Rule 30 of the negotiated Agreement.

As for the Organization's reliance on the language of Rule 25(b) as a prohibition against Carrier's employment of a qualified Signal Maintainer, the Board is constrained to point out that Rule 25 as captioned and structured deals only with Assistant Signalmen and Assistant Signal Maintainers. This Board has often held that the caption of a rule generally indicates the extent and intent of the rule's provisions. There is nothing to be found in Rule 25 which prohibits the hiring of qualified Signalmen and/or Signal Maintainers in the absence of qualified Assistants.

On the basis of the relative convincing force of the Agreement language and the evidence in this case, the Board finds that there has been no violation of either Rule 25(b) or of the Assistant Signalmen Training Program Agreement. Therefore, the claim as presented is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.