

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32229
Docket No. SG-31813
97-3-94-3-107**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of G. E. Younkin for reinstatement to the position of Maintainer Test with the appropriate seniority date in the classification, account Carrier violated the current Signalmen’s Agreement, particularly Rule 2-D-1, when it failed to provide the Claimant with a reasonable opportunity to qualify for the position and improperly disqualified him effective September 1, 1992. Carrier’s File No. SG-560. General Chairman’s File No. RM-2434-63-393. BRS File Case No. 9327-CR.”

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.

Claimant was awarded the position of Maintainer-Test effective August 3, 1992 and began training to qualify as he had no previous seniority in that class. By date of September 1, 1992, Claimant was notified that he had been disqualified from the position with the Agreement right to request a practical test to prove his qualifications. The Claimant requested the test under protest and failed. The Carrier confirmed the disqualification.

The Organization alleges Carrier violation of the Agreement in that the Claimant (1) was never provided proper notification of his disqualification, (2) was provided insufficient time to qualify and (3) was never given proper instructions to learn the position. The Organization provided daily reports to show that the Claimant was regularly assigned work unrelated to the Maintainer-Test position for which he was attempting to qualify. It further states that the test taken under protest was not a fair test.

The Carrier contends that its disqualification was appropriate under Rule 2-D-1. The Claimant was given full opportunity to qualify and failed to do so. Even further, the Claimant was permitted to take the administered test and failed to pass it. The Carrier notes that no exception to the fairness of the test was made when the test was administered. The Carrier consistently states throughout this claim that the Claimant's disqualification from the position of Maintainer-Test was proper and sufficiently grounded.

On this instant record, the Board concludes that the Carrier complied with the Agreement in the disqualification of the Claimant. There is no proof in this record of an Agreement violation. The Claimant was notified verbally and by letter of the reasons for disqualification. The Carrier asserted without rebuttal that the Claimant was given in excess of ten working days on the position. This complies with Rule 2-D-1. Most importantly, once the Carrier determines that the Claimant is unqualified the burden is on the Organization to prove otherwise. There is no probative evidence of record to support a determination that the Carrier's actions were arbitrary, capricious or improper (Third Division Awards 30119 and 30232). The claim must be 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 17th day of September 1997.