

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32289
Docket No. SG-32849
97-3-96-3-186**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Grand Trunk Western Railroad

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad (GTW):

Claim on behalf on M. F. Embry for payment for the time required for him to travel to Carrier's training facility in Toronto, Ontario, for training between March 1 and March 12, 1994, account Carrier violated the current Signalmen's Agreement, particularly Rule 22 (e)(4)(ii), when it denied the Claimant's request for payment for his travel time. Carrier's File No. 8390-1-88. General Chairman's File No. 95-08-GTW. BRS File Case No. 9762-GTW."

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, a Signal Maintainer working at Pontiac, Michigan, attended CN Signal School at Carrier's training facility in Toronto, Ontario, from March 1 through 12, 1994, at his own request after reaching an understanding with Carrier that he would be reimbursed for his food and lodging, but receive no pay for travel time. When he subsequently inquired about travel pay, Carrier reminded him that he voluntarily undertook this "refresher" training on the above conditions. The Organization then filed a formal grievance on Claimant's behalf claiming violation of Rule 22(e)(4)(ii)-- Training Program.

The Organization contends that the application of Rule 22 was not intended to be limited to new employees, as evidenced by the fact that Claimant and other journeymen were allowed to attend training classes in Toronto. Accordingly, it asserts Claimant is entitled to compensation based on grounds that Claimant, as an employee promoted in 1989, was not eligible for the Toronto Apprenticeship Training Program as a matter of right, but was allowed to participate in those classes as refresher training solely at his request. The program, Carrier asserts, is clearly designed for new employees; it was under no contractual obligation to honor Claimant's request, nor was he under any obligation to complete the course at the risk of dismissal for failure to do so.

In the view of this Board, the parties to Rule 22 must be presumed to have meant what they said when they defined the purpose of Rule 22 training as the preparation of new employees for promotion to higher positions. The Organization's argument that the Rule was not intended to say what it says because Claimant was allowed to attend classes is unpersuasive. When Claimant sought and was granted permission to participate in the Toronto training, it was not as a probationary employee subject to the benefits and burdens of the Rule. Rather, he and Carrier fixed the terms upon which he would be allowed to do so with an eye on the framework in which training would have been afforded had Claimant been a new employee. To attend training he was not technically authorized to undertake, he received free food and lodging, and he waived pay for travel time. He made his bargain, and should not now be heard to serve up that understanding as evidence to prove a meaning which the language of Rule 22 cannot support.

This Board finds that Rule 22 did not apply to Claimant's training; that he recognized this fact when he sought special treatment from the Carrier; that such treatment was afforded based upon the Carrier's reliance on Claimant's representations; that the parties' understanding was not an unauthorized and impermissible local modification of the Rule, but rather a mutual accommodation of

interests under circumstances in which the Rule had no application; and that the Organization cannot complain that the Rule was violated after its member received a resultant benefit from the very agreement he consented to.

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 13th day of November 1997.