

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35972
Docket No. SG-36334
02-3-00-3-534**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company Inc.**

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 of Willie Walton for reinstatement to service with compensation for all lost time and benefits, account Carrier violated the current Signalmen’s Agreement, particularly Rule 42, when, on August 10, 1999, it removed Claimant from service following a personal injury and on August 18, 1999 dismissed him from service without providing him the benefit of a fair and impartial hearing. Carrier’s File No. 8390-1-119. General Chairman’s File No. 99-63-GTS. BRS File Case No. 11350-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.

The Claimant began his employment with the Carrier on April 19, 1999. On August 17, 1999, the Claimant was notified that an Investigation would be held to determine his alleged responsibility for failure to promptly report an injury on duty. After the Notice of Investigation was issued, the Carrier reviewed the Claimant's employment record and determined that the Claimant was a Temporary Signal Helper who was still within his 130-day, probationary period. On that basis, the Claimant was advised that the Investigation notice was canceled and that his employment was terminated.

The instant claim contends that the Carrier violated Rule 42 (Discipline) when the Claimant was terminated without a fair and impartial Investigation. The Organization takes the position that the Carrier erred in its determination that the Claimant was a probationary Temporary Signal Helper. Rather, the Organization argues, the Claimant was an Assistant Signal Maintainer, subject to the 90-day probationary period provided in Rule 42. Because the Claimant had passed the 90-day probationary period at the time of the alleged incident, the Organization asserts, he was entitled to all the procedural and due process protections afforded under the Agreement.

The Carrier's position is that the provisions of Rule 42 were not applicable to the Claimant. Because he was a Temporary Signal Helper, the Carrier contends that Article I(J)(3) controls. That provision states:

"(3) The probationary period of a temporary helper shall be not more than 130 days. Thereafter, a temporary helper shall be reclassified as an assistant signalman."

The issue before the Board is a narrow one. Was the Claimant working as a Temporary Signal Helper or an Assistant Signal Maintainer? Since he was dismissed after 90 days but less than 130 days of employment, resolution of that question is critical to the outcome of the case.

Careful review of the record shows that the Organization failed to prove that the Claimant was an Assistant Signal Maintainer. During the handling of this claim on the property, the evidence proffered by the Organization consisted of a copy of the Claimant's paycheck statements showing his hourly rate of pay. The Carrier in response furnished the Organization a copy of the pay listings for the BRS, which indicate that the rates of pay for Temporary Signal Helper and Assistant Signalman

were identical during the time period at issue. Because the payroll records do not differentiate between the two positions, we must conclude that there is insufficient evidence to support a finding that the Claimant was on a position that would have entitled him to the protections of Rule 42 of the controlling Agreement.

No violation of the Agreement has been proven, and therefore 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 8th day of March, 2002.