

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40311
Docket No. SG-39835
10-3-NRAB-00003-060666
(06-3-666)

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe:

Claim on behalf of T. Q. Do, for payment for all time lost, including overtime, daily allowances, and skill pay, as well as credit for all lost days for seniority and unemployment benefits, from October 7, 2005 and continuing until he is returned to duty, account Carrier violated the current Signalmen’s agreement, particularly Rules 8, 18 and 54, when it improperly withheld the Claimant from service without informing him of a reason and without holding an investigation. Carrier’s File No. 35-06-0003. General Chairman’s File No. 05-099-BNSF-20-C. BRS File Case No. 13662-BNSF.”

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 in 1998. In 2003, he decided to transfer from the Mechanical Department to the Signal Department. Pursuant to that transfer, the Claimant had a medical examination performed by one of the Carrier's medical contractors. The examiner subsequently informed the Claimant that he was color blind and was medically restricted from jobs "where color discrimination is required." According to the Carrier, this information did not find its way to Signal Department management, and so the Claimant was assigned to a Signal Department position in January 2004.

On October 5, 2005, the Claimant was given a color test after supervision learned that he had called out the wrong signal colors during a cutover the previous day. The Claimant was unable to correctly distinguish the color aspects of the signal devices that he was working on, the test showed. Management concluded that he was therefore incapable of properly testing the signals to verify that the equipment was properly functioning.

The Claimant was notified on October 6, 2005 that distinguishing colors is an essential function of the Signalman position and that he was being removed from service due to his color blindness. The Claimant was also advised of his options for alternate service outside of the Signal Department, including an immediate transfer to the Track Department. The Claimant indicated that he wanted to wait until he could bid on a position in the Mechanical Department. When a Mechanical Department vacancy did not open up, the Claimant transferred to the Track Department.

The instant claim alleges that the Claimant was improperly withheld from service and should be returned to his Signalman position. The Carrier denied the claim on the basis that the Claimant's color blindness disqualified him from Signal Department service.

After careful review of the record in its entirety, the Board finds that there has been no proven violation of the Agreement. The Carrier was not required to comply with the disciplinary procedures set forth in Rule 54 because the Claimant was not withheld from service as a result of any alleged misconduct. Instead, he was medically disqualified from working in the Signal Department. The Agreement does not provide

for an Investigation to be held in the event that an employee is medically unable to fulfill the physical requirements of the position.

The critical fact in this case is that the Claimant cannot satisfy the color recognition or signal aspects required of Signal Department employees. Signalmen must be able to distinguish colors in order to perform their duties of installing and testing colored signal devices in addition to properly wiring those devices. The Claimant is unable to perform this core requirement of the position. Moreover, we have no basis to doubt the Carrier's contention that corrective lenses are unsuitable as a means of compensating for color blindness.

It is unfortunate that the results of the Claimant's physical exam did not get referred to the Signal Department when the Claimant transferred there from the Mechanical Department. However, that does not change the fact that the Carrier acted appropriately when it removed the Claimant from the Signal Department due to his medical restriction. The Carrier informed the Claimant of the reasons for his disqualification and notified him that he could transfer to a different department. The Carrier's actions were consistent with the Agreement. Accordingly, 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 1st day of March 2010.