

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40616
Docket No. SG-38611
10-3-NRAB-00003-040621
(04-3-621)**

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: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of E. Turner, for 10 days pay at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52(B&C), when on April 11, 2003 through April 22, 2003, it withheld the Claimant from service, and failed to provide proper training and compensation for his reexamination test. Carrier’s File No. NEC-BRS(S)-SD-1017. General Chairman’s File No. JY320101054-180310. BRS File Case No. 13020-NRPC(S).”

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.

This dispute is over the application of Rule 52 to the circumstances affecting the Claimant's loss of ten days of pay. The Organization maintains that the Claimant was improperly withheld from service from April 11 until April 22, 2003 and is due pay at the time and one-half rate for the Carrier's violation. Specifically, the Carrier withheld the Claimant without proper cause, requiring him to be retested outside his advertised job assignment and travel outside his division in violation of Rule 52(b) and further provided no assistance as requested and required by Rule 52(c).

The Carrier contends that the facts support no violation, whatsoever. The Claimant was required to re-qualify. He attempted to do so three times and failed. Although he attended classes outside his division, he was properly compensated for traveling outside his regular tour of duty to take the re-qualification test, which he failed. Under Rule 52(c) the Claimant was therefore disqualified and any loss of work was due to his failure to successfully pass the required examination. Nor was he entitled to any assistance under Rule 52(c).

The applicable Rule in this dispute is Rule 52 – Examinations – Written, which states, in pertinent part:

“(a) Employees working in the C&S Department will be required, as directed by the Company, to take examinations or re-examinations on the following rules and instructions:

(1) Book of Rules & Timetable (NORAC,
General Code, etc.)

(b) Examinations or re-examinations referred to in paragraph (a) of this rule shall be given during the employee's regular tour of duty.

(c) Employees unable to satisfactorily pass an examination will be permitted to take a re-examination in accordance with applicable policies. However, where employees obtain a grade below 70%, they may request and Amtrak will provide, as soon as practicable, a special instructional class to assist them in their efforts to qualify.”

The “applicable policies” to the above Rule provide that the Claimant re-qualify on NORAC Operating Rules and pass with a score of 85%. The facts demonstrate that the Claimant’s first attempt on March 24, 2003 scored 78%. Under the policies, employees who fail the exam, as did the Claimant, are required to take a second examination within 30 days and pass. If they fail the second exam, or fail to be re-examined within the timeframe, they “will not be qualified to perform service.” The Claimant re-took the examination to qualify on April 2, 2003, scoring 80%. Accordingly, he was disqualified on NORAC until he could re-qualify.

The Board finds nothing in this record to support the Organization’s position. On April 11, 2003, the Claimant was permitted to attend another NORAC re-qualification class and scored 84% - not enough to qualify with an 85% or higher score. This third attempt was gratis under this Rule allowing two attempts which the Claimant failed on March 24 and April 2, 2003. The Claimant was disqualified after the third attempt on April 11, 2003. The policy reads: “Employees who fail the second examination, or who fail to be re-examined within thirty days, will not be qualified to perform service.”

As for Rule 52(b) the Claimant did not take the examination during his regular tour of duty. However, the Board notes no rebuttal to the Carrier’s position that the Claimant was paid time and one-half for each qualification test because it was on his division, but outside his regular tour of duty. The Board also studied the Organization’s position that the Claimant requested additional assistance to qualify, which was denied in violation of Rule 52(c). The Board notes that no request was made after the Claimant failed his first two exams, but only after he was disqualified. Most importantly, the Rule, as written, requires the Carrier to provide instruction if employees “obtain a grade below 70%.” The Claimant did not obtain a score below 70% and as such, no violation of the Rule can be found.

The Board concludes that the Claimant was not qualified to perform service and his disqualification, even after being given a third attempt, was a self-activating disqualification. It was the Claimant’s own failure that resulted in this lost opportunity to work when he failed the April 11, 2003 examination. Further, it was the Claimant’s own choice to take the class on April 22, 2003 outside his regular tour of duty on the Metropolitan Division, so that he might promptly return to service. The Claimant finally passed the required examination on April 22, 2003,

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ending his disqualification. Under these facts, the Board finds no evidence that the Carrier violated Rule 52 in any manner. 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 27th day of August 2010.