

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 49

Case No. 49

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it removed Mr. N. Carey from the position of Welder Helper for failure to pass the book of rules.

2. That the Carrier will now return Claimant to his former position of Welder Helper and compensate him the difference between his current rate of pay and the Welder Helper rate of pay, 8 hours a day, Monday through Friday and be paid at the time and one-half rate of pay for all overtime worked by the employee replacing Claimant on the Welder Helper position.

FINDINGS

The Organization contends that the Carrier on April 8, 1991 improperly removed the Claimant from his position as Welder Helper because of his failure to pass a Book of Rules test. The Organization notes that the Claimant had performed satisfactory service as a Welder Helper since December 12, 1983.

In taking the action, the Carrier relied on its Operations Department Circular No. OD-14, Rules Examination Policy. This

Policy, issued on December 17, 1990. extended the requirement as to rules examination, as follows:

All Maintenance of Way employees (except laborers) will be required to pass biennial examination on Rules of the Maintenance of Way, applicable Safety Rules and General rules, and other rules and instructions that apply to their craft.

The Board concurs with the view that Helpers (required to take tests under Circular No. OD-14) are readily distinguishable from Laborers or Trackman, who are not so required. Without contradiction, the Carrier states that the Claimant failed to pass the rules examination in three instances and was removed from the Helper position only after these attempts.

As the Board sees it, the issue here is not the particular removal of the Claimant from the Helper position but, rather, it is whether or not the Carrier is in violation of the Agreement by effectuation of its 1990 Rules Examination Policy to include Helpers. The Board has previously considered this question in tangential fashion in Award No. 41, which sustained a claim overruling the Carrier's refusal to permit an employee to resume work as a Welder's Helper in anticipation of being given a rules test. That Award noted, however, as follows:

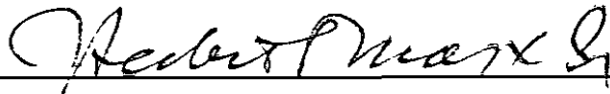
It may well be that the Carrier, under Circular No. OD-14, may require the Claimant (and others similarly situated) to take and pass a Book of Rules test as a condition of maintaining his position, just as is done will all other employees, other than Laborers.

Dealing with the underlying question of the propriety of Circular No. OD-14, the Board finds no rule violation nor any

arbitrary or discriminatory action in the Carrier's determination to apply rules examination to Helpers. It follows that the application of this change to the Claimant was not improper, provided that he received the full opportunity under the Policy as to attempts to complete the examination successfully.

A W A R D

Claim denied.

A handwritten signature in cursive script, reading "Herbert Marx Jr.", is written over a horizontal line.

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: April 28, 1993