

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43399
Docket No. SG-44076
19-3-NRAB-00003-170121**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Illinois Central Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of K. I. Park, for assignment to Signal Inspector Position Gang 4 PTC, and for the difference in pay between the Signaller Position he is currently assigned, and Signal Inspector Position Gang 4 PTC from September 11, 2015, until this dispute is resolved; account Carrier violated the current Signalmen’s Agreement, particularly Rules 3, 28 and 31, when on September 11, 2015, it removed the Claimant’s bid from the September 11, 2015, Awards Bulletin and assigned a junior employee to Signal Inspector Position Gang 4 PTC. Carrier’s File No. IC-BRS-2015-000017. General Chairman’s File No. IC-018-15. BRS File Case No. 15533-IC.”

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 case involves the interplay between an employee's right to bid for promotions and the Carrier's right to require employees who do not successfully qualify for their new positions to return to their former positions. Rule 28 governs promotions. It provides:

- (a) Promotions shall be based on ability and seniority; ability being sufficient, seniority shall govern.
 - (b) Promotion means advancing an employee by bulletin to a position of Foreman or Inspector.
 - (c) An employee accepting promotion and failing to qualify within twenty (20) workdays, must return to the former position unless filled by a senior employee or abolished in which event the employee may exercise displacement rights.
-

Rule 31, Assignments, governs how positions and vacancies are bulletined. Rule 31(b) states, in relevant part: "Bulletins will be issued on the fifth and twentieth of each month...." Employees have two opportunities a month to bid on vacant positions. The essential issue raised in this case is whether the Carrier violates the Agreement if it refuses to place a successful bidder in a position on the basis that the individual previously failed to qualify for that position.

On May 7, 2015, the Claimant failed to qualify for a Signal Inspector position and was disqualified from holding that position. In September 2015, the Claimant bid on another Signal Inspector position, on PTC Gang 4, and was awarded the position on September 11, 2015. Later that same day, when the Carrier realized that he had previously been disqualified as a Signal Inspector, it revised the bid awards and awarded the position to junior employee. The Carrier stated that when the Claimant had failed to qualify as a Signal Inspector in May 2015, it had barred him from bidding any other Signal Inspector position for six months. The Organization filed this claim, alleging that the Carrier violated Rule 3, Rule 31 and Rule 28 of the Agreement when it refused to award the Signal Inspector position to the Claimant.

According to the Organization, the Agreement allows for any senior employee to bid and qualify two times a month for positions that are considered promotions. There is no language that prohibits employees who have failed to qualify from trying

again for any period of time. As a result of the Carrier's improper restriction, the Claimant was forced to forfeit his seniority rights and remain in his Signalman position. The Claimant is contractually entitled to an opportunity to qualify for a position that he successfully bid. The Carrier's six-month ban lacks any support in the Agreement: Rule 28 provides "20 workdays" in which to qualify for a position and there is no time limit on when an employee can attempt to qualify again. Had the parties' intent been to restrict an employee's ability to requalify for promotions for six months after failing to qualify, they would have stated so in the Agreement.

The Carrier contends that the Organization has not met its burden of proof and that there has been no violation of the Agreement. Under Rule 28, which applies to Foreman and Inspector positions, seniority governs who is awarded a position, but Rule 28 clearly requires that employees be able to qualify on the new position. Rule 28(a) states "Promotions shall be based on ability and seniority; ability being sufficient, seniority shall govern." The parties knew that not all successful bidders would qualify: Rule 28(c) expressly makes provision for employees who fail to qualify to return to their former positions. Under Rule 28, an employee's ability is the determining factor in considering promotion to Signal Inspector. Once the employee has failed to qualify after having had the contractually agreed twenty days to do so, he or she has proven not to have the necessary ability to be awarded the job. To allow employees to "jump" from one "promotion" to another even though the employee has proven that he or she cannot qualify for it would be a waste of time and resources, and contrary to the intent of the Agreement. It is illogical to think that an employee failing the Signal Inspector's test and failing to qualify for the position can then be considered as having the ability to hold an identical Signal Inspector's position elsewhere. The Agreement was not violated because the Claimant did not possess the necessary ability to hold a Signal Inspector's position. To suggest that an employee can fail to qualify for a Signal Inspector position but bid to another Signal Inspector position without regard to qualifications is contrary to the intent of the Agreement and to common sense.

From the Organization's perspective, restricting an employee's ability to bid on a promotion is inconsistent with Rule 31. Someone who fails the Signal Inspector's test by one or two points could take the exam two weeks later after studying and pass it. For the Carrier, the problem is one of wasting time and resources in awarding a promotion to someone who has already failed to qualify for the position. Under Rule 31, which allows bidding twice a month, someone could be a "serial bidder,"

constantly bidding on jobs for which he or she fails to qualify, then moving back to their former position.

The Organization is correct that the Agreement does not expressly limit employees who have failed to qualify from turning around and bidding on the same position again immediately after having been disqualified. But one of the principles of contract interpretation is reasonableness: one should not interpret a contract in a way that produces absurd or unreasonable results. Once an employee has failed to qualify for a position, he or she has demonstrated that they do not have the ability to perform the job. Given the serious consequences that could arise if someone unqualified was working as a Signal Inspector, it is both reasonable and realistic for the Carrier to assume that someone who has failed to qualify is, in fact, not qualified, at least for some period of time. The question then becomes: how long may the Carrier assume that someone who failed to qualify for a position will remain unqualified? How long before that person may bid again on the same position?

Having considered the arguments of the parties in the several similar cases before it, the Board is of the opinion that six months is too long a time period for employees to be barred from being allowed to exercise their contractual right to bid for promotion. A more reasonable time frame would be 90 days after failing to qualify for a position—employees would still be able to bid several times a year but serial bidding by unqualified individuals would be limited. The Board also recognizes, however, that circumstances might arise that would warrant a different “reasonable” period of time, and the parties are encouraged going forward to further develop the reasonableness standard on the property.

In this case, the Claimant originally failed to qualify on May 7, 2015, and it was September 11, 2015, when the Carrier refused to award him the promotion that his seniority would otherwise entitle him to. This was four months after his initial disqualification. The Claimant should have been awarded the position and had an opportunity to qualify again.

The Organization has asked that the Claimant be awarded the difference in pay between the Signalman’s position and Signal Inspector from the date that the Claimant should have been awarded the Signal Inspector position. However, there is no indication in the record or any guarantee that he would have qualified the second time around. As a result, no monetary remedy will be awarded.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of January 2019.