

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43444
Docket No. SG-44477
19-3-NRAB-00003-170635**

The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of D.L. Roulston, for compensation equal to the difference in the rates of pay between that of a Signalman and that of an Electronic Technician/Inspector (ETI) for all hours that the Claimant works subsequent to Carrier disqualifying him from his ETI position, overtime compensation for all time he traveled from his residence to the work location and back to his residence, and the difference in the IRS mileage rate and that of the \$9.00 per 25 miles traveled rate of Rule 26, from the time it disqualified the Claimant continuing until this dispute is resolved; account Carrier violated the current Signalmen’s Agreement, particularly Appendix EE, and Rules 1 and 65, when it disqualified him from holding said position without having any just cause. Carrier's File No. 1659678. General Chairman's File No. S-Appendix EE. 57, 65, 67-1570. BRS File Case No. 15674-UP.”

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.

In the instant claim, the Organization alleges the Carrier violated the Agreement when it disqualified the Claimant from an Electronic Technician Inspector position.

In a letter dated November 12, 2015, the Claimant was informed that his former Electronic Technician (ET) position would be changed to an Electronic Technician Inspector (ETI) position. In the November 12, 2015 letter, the Claimant was provided a choice to displace or remain on the job and accept the duties of the new position. The letter explained testing requirements for former ET employees choosing to stay on the new ETI position, including the successful completion of the Qualification Examination for Signal Foreman, Signal Inspectors, and Signal Lead (commonly referred to as the Foreman's Test). The letter also explained that employees would be allowed displacement rights if they failed to complete the requirements. Affected employees were allowed thirty (30) days to make an election. On December 11, 2015, the Claimant chose to remain on the new position. On February 3, 2016, the Claimant was given the Foreman's test and failed. By letter dated February 9, 2016, the Claimant was notified of his disqualification from the ETI position due to his failure to attain a passing grade on the Foreman's test.

By letter dated February 10, 2016, the Organization requested a Rule 57 Unjust Treatment hearing. The Unjust Treatment hearing was held on April 4, 2016. By letter dated April 19, 2016, the Carrier sustained the Claimant's disqualification as an ETI.

The Organization argues the Claimant possessed the necessary skills and ability to perform the ETI duties.

The Carrier argues a) the Carrier has the right to set qualification requirements for a position and determine if an employee possesses the necessary skills and abilities for the job, b) the Claimant failed to receive a passing score on the qualifying test, thereby lacking the necessary skills and abilities required for the position, and c) the Organization failed to satisfy its burden of proof obligation.

After a thorough review of the record, the Board finds the Organization failed to meet its burden. The Board has consistently held that the Carrier has the right to determine qualifications, provided the Carrier's actions in making those determinations are not arbitrary or capricious. Here, the Carrier provided advance notice to the Claimant of the Carrier's requirement that he pass the Foreman's test and provided the Claimant with significant study time prior to taking the test (over eighty days). A review of the unjust hearing transcript indicates the Claimant was aware he was required to pass the Foreman's test, and when he requested additional study time for the test, the additional study time was granted. The Carrier's actions here were neither capricious nor arbitrary. As such, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 2019.