

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43446
Docket No. SG-44504
19-3-NRAB-00003-170651**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 V. Barnes, for return to his Hillsboro, Illinois, Electronic Technician/Inspector (ETI) position, compensation at the ETI rate of pay for all hours, including overtime, worked on the Hillsboro ETI position from March 28, 2016, continuing until he is returned to said position, and all other benefits including mileage, meals expense, and travel time the Claimant incurred resulting from Carrier's disqualification; account Carrier violated the current Signalmen's Agreement, particularly Appendix O and EE, and Rules 57, 65, and 67, when it disqualified him from holding said position without having any just cause, and when it failed to hold an Unjust Treatment Hearing. Carrier's File No. 1662022. General Chairman's File No. S-Appendix-0 & EE, 57, 65, 67-1557. BRS File Case No. 15675-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 and removed the Claimant from an Electronic Technician Inspector position, and when it denied the Claimant a Rule 57 Unjust Treatment hearing.

On January 29, 2016, the Carrier posted a bid for an Electronic Technician Inspector (ETI) position. The assignment was awarded to the Claimant on February 12, 2016. On the day prior to awarding the position, Manager of Signal Maintenance H. Morales met with the Claimant regarding his desire to work the ETI position. Manager Morales documented the meeting in a One on One report dated February 11, 2016, which was signed by the Claimant and Manager Morales. The report noted the following:

“Lack of Training and prior qualification failures

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Per our discussion- You have shown interest in the Skilled ETI position and have placed a bid on the current opening for that position. I have concerns about your ability to do this job but I also want to ensure that I am as fair as I can be. My concerns stem from you having twice failed to achieve a passing score of 80% on the Qualification Examination for Signal Foreman, Signal Inspector, and Signal Lead Men. You will be awarded the position and you will be re-tested on the Qualification Examination, if you fail to achieve the needed 80% on the Qualification Examination then you will receive a Disqualification Letter for the Skilled ETI position. I will assist you in whatever way, I am sure if you put forth the effort, you can achieve a passing score.”

By letter dated March 28, 2016, the Claimant was informed that he was disqualified from the ETI position due to his inability to attain a passing grade on the Qualification Exam. By letters dated March 28, and April 11, 2016, the Organization requested a Rule 57 Unjust Treatment hearing. The Organization’s request for the Unjust Treatment hearing was denied by the Carrier.

The Organization argues a) the Carrier committed a procedural due process violation by denying the Claimant his right to an Unjust Treatment Hearing, and b) the Claimant possessed the necessary skills to perform the ETI duties.

The Carrier argues a) the Organization committed a procedural error when it amended its argument in an attempt to perfect its claim, b) the Carrier has the right to set qualification requirements and to determine whether the employee possesses the necessary abilities, c) the on-property record establishes the Claimant lacked the required skill and ability to perform the ETI duties, and d) the Organization failed to satisfy its burden of proof obligation.

A thorough review of the record reveals the Claimant was provided a reasonable opportunity to demonstrate he could perform the ETI duties. He was given advance notice that his skills and abilities were potentially deficient and that he would need to pass the qualification exam to remain in the position. The Claimant was given an extended time period to study for the exam and was permitted to work the position prior to taking the exam.

In this case, the Organization strongly argues that based on the Carrier's refusal to grant an Unjust Treatment Hearing, the claim should be granted in its entirety. While the Board generally and normally agrees with this notion, the fact pattern here does not warrant such a finding. The Claimant in this case was allowed to work the position for a period of more than 30 days, was provided training, was put on notice that he needed to pass the test, and then failed to do so. Even if the Unjust Treatment Hearing would have been granted, it would not have changed the result of the Claimant failing the test. To overturn the Claimant's test failure based on an alleged technicality would not serve the parties nor the process any justice. The Board also finds that Rules 1 and 40 provide the Carrier the ability to determine fitness and ability, with due consideration of seniority, when assigning employees to positions such as the one here. The Carrier acted within the confines of these rules. The Board must note that the fact pattern in this case is unique and holds that this award should not be used as guidance or precedent in any future cases.

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.