

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43871  
Docket No. SG-44963  
20-3-NRAB-00003-180409**

**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 V. Barnes, for immediate return to his Skilled Signal Maintainer Position, compensation equal to the difference in the rates of pay between that of a Signalman and that of a Skilled Signal Maintainer’s Position for all hours that the Claimant works subsequent to Carrier’s improper disqualification, compensation for any overtime opportunity he would have been entitled to on his former 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 September 29, 2016, continuing until this dispute is resolved; account Carrier violated the current Signalmen’s Agreement, particularly Rules 1(k), 57, and 65, when it improperly disqualified him from holding said position without proper cause. Carrier's File No. 1681126. General Chairman's File No. S-1(k), 57, 65-1595. BRS File Case No. 15835-UP. NMB Code No. 173.”**

**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.

The instant dispute arose following the disqualification of the Claimant by the Carrier from his position as a Skilled Signal Maintainer due to poor performance. By letter dated September 29, 2016, the Claimant was notified of his disqualification, stating in relevant part:

“...This letter is to inform you that you are hereby disqualified from the position of Skilled Signal Maintainer. This disqualification is a result of your demonstrated lack of ability to competently execute your Signal Maintenance duties. You shall not be permitted to work in any Skilled Signal Maintainer’s position while you are disqualified.

As such, you should arrange to exercise your seniority in accordance with Rule 40 of the BRS Agreement...”

Following the disqualification, the Organization requested an Unjust Treatment Hearing under Agreement Rule 57, which was held on December 8, 2016. By letter dated December 23, 2016, the Carrier advised the Claimant that based upon the evidence adduced at the hearing, the Carrier determined the Claimant had not been treated unjustly and advised the Claimant he remained disqualified.

The Carrier has the managerial prerogative to determine fitness and ability, provided that such determinations and findings are not arbitrary. The Board has carefully reviewed the record here and cannot find that the Carrier’s decision to disqualify the Claimant as arbitrary. The record indicates the Claimant knew, or should have known, of the on-going performance concerns the Carrier had with the Claimant based upon the numerous discussions (including One on One discussions) between the Claimant and his Manager. Although the Organization argues that many of the items documented by the Carrier occurred while the Claimant was on leave, Manager Morales indicates that the Claimant left his territory in poor condition prior

to taking leave and the problems were found after the Claimant's territory was first tested.

The record here is replete with instances of sub-standard performance and the Board cannot find that the Carrier was arbitrary in its decision to disqualify the Claimant from the position of Skilled Signal Maintainer. As a result, 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 28th day of January 2020.