

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44086
Docket No. SG-45534
20-3-NRAB-00003-190430**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of D. N. White, Jr., for assignment to the Electronic Technician/Inspector (ETI) position on Gang No. 3027, and to be made whole for the difference in pay for all regular working hours between the Signalman’s position he is holding and the ETI position he desired to displace to, starting on January 20, 2018, and continuing until he is properly placed onto the ETI position, account Carrier violated the current Signalmen’s Agreement, particularly Rules 46 and 65, when on January 20, 2018, Carrier denied the Claimant his seniority and displacement rights.”

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 Rules 46 and 65 of the Agreement when on January 20, 2018, it refused to allow the Claimant to

displace a junior employee holding an Electronic Technician/Inspector (ETI) position on Gang 3027. At the time of dispute, the Claimant was assigned as an ETI on Gang 4492. The Claimant's ETI position was abolished on January 10, 2018.

In summary, the Organization argues a) the Claimant had passed the ASSET test required for the position, had passed the first level of his FCC license, and was qualified for the position, b) the Claimant was senior to the employee he wanted to displace, c) the Carrier failed to provide evidence the Claimant had not passed the required ASSET test, and d) the Carrier failed to provide evidence the Claimant was not qualified for the position.

In summary, the Carrier argues a) the Carrier maintains the fundamental managerial right to make determinations of fitness and ability, b) the negotiated language of Rule 1, Note, recognizes the Carrier's right to make determinations of fitness and ability, c) arbitral precedent affirms the Carrier's right to make determinations of fitness and ability, d) the Claimant never passed the ASSET exam required for the position, and e) the Organization failed to satisfy its burden of proof.

After a thorough review of the record, the Board finds the Organization failed to meet its burden. Therefore, the claim must be denied.

Boards of Arbitration have routinely held that the Carrier has the fundamental right and responsibility to determine qualifications of a position. In the instant case, the record indicates the Claimant lacked the FCC licensing required for the position. Furthermore, evidence presented indicated the Claimant had taken the ASSET practice exam but there was no evidence provided that proved that the Claimant had completed the actual ASSET exam required for the position. Although the Claimant had previously worked in an ETI position, the core tasks of his former ETI position differed significantly from the core tasks specific to the new position.

Given all the above, the claim is hereby 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.

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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 11th day of August 2020.