

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44091
Docket No. SG-45581
20-3-NRAB-00003-190474**

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 J.W. Felshaw, for the removal of any discipline from his record, including the Maps 2 Training, and compensation for 8 hours at the Skilled Signal Foreman rate of pay; account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it failed to render a decision for the Unjust Treatment Hearing held on March 28, 2018, and when it failed to provide the Transcript for said Hearing.”

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.

On February 13, 2018, the Carrier disqualified the Claimant from an Electronic Technician/Inspector Position for failing to detect an improperly displayed signal. The Carrier also issued a Maps 2 waiver notice to the Claimant on February 17, 2018, which he signed on February 27, 2018. On February 19, 2018, the Organization requested a Rule 57 Unjust Treatment Hearing, which was granted and held on March 28, 2018.

On April 28, 2018, the Organization filed the instant claim, arguing the Carrier committed a procedural error by failing to provide the Organization with a transcript or decision regarding the March 28, 2018, Unjust Treatment Hearing.

In summary, the Organization argues a) the Carrier committed a procedural error by failing to provide a transcript of the Unjust Treatment Hearing to the Organization or Claimant, b) the Carrier did not issue its decision regarding the Unjust Treatment Hearing until June 21, 2018, 54 days after the hearing, and c) the Claimant signed the waiver under threat.

In summary, the Carrier argues a) the Carrier has the managerial right to determine qualifications and to determine fitness and ability to perform a job, b) the Organization failed to provide any evidence to refute the Carrier's basis for disqualifying the Claimant, c) the Carrier is not required to provide a transcript for a Rule 57 hearing, d) under Rule 55 B there was no need for the Carrier to provide a hearing because the Claimant received, accepted, and signed the waiver, e) the argument made by the Organization and the remedy requested is an attempt to blend two separate issues into one. The Organization's argument is that the Carrier failed to provide the transcript for the Unjust Treatment Hearing regarding the Claimant's disqualification, however the remedy demanded pertains to a completely separate issue based upon the MAPS 2 rule violation, and f) the Organization failed to meet its burden of proof.

In the instant claim and as noted above, the Organization requested an Unjust Treatment Hearing on February 19, 2018 based upon the February 13, 2018 disqualification of the Claimant. The Statement of Claim is requesting, among other things, that the MAPS 2 Training be removed from the Claimant's record.

The Claimant signed a MAPS 2 waiver on February 27, 2018. In relevant part, the signed waiver states the following:

"...I, Jacob Felshaw, hereby waive my right to a hearing pursuant to the collective bargaining agreement, accept responsibility in connection with the charges set forth above, and accept the remedial training program required by the Carrier... I acknowledge that I fully understand the terms of this waiver and have entered into it voluntarily of my own accord. I further acknowledge that I have had an opportunity to discuss the charges, the required remedial training program, and my collective bargaining agreement rights with my union representative. I hereby release and

relieve the Organization, the Carrier, and their officers and agents from any further obligation in connection with the charged violations and required training program...”

The Statement of Claim here is requesting removal of the MAPS 2 training, yet the Claimant signed a waiver accepting responsibility for the very disciplinary action the Organization is now requesting be removed. Given the clear terms of the waiver noted above, the Board is not inclined to disturb the validity of the signed waiver. As a result, the claim is 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 11th day of August 2020.