

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44193
Docket No. SG-45428
20-3-NRAB-00003-190154

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

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

STATEMENT OF CLAIM:

“Claim on behalf of G.L. Knuth, for reinstatement to his former position, removal of his disqualification from Skilled Signal Maintainer positions, and compensation for the difference in pay between the Skilled Signal Maintainer position and Skilled Signaller position until he is properly returned to the Skilled Signal Maintainer position, account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it failed to provide substantial evidence in the Unjust Treatment Hearing to support its arbitrary decision to disqualify the Claimant on October 3, 2017, thereby failing to prove that its action was justified. Carrier's File No. 1698752. General Chairman's File No. N 0130. BRS File Case No. 15966-UP. NMB Code No. 106.”

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 a Skilled Signal Maintainer position.

In a letter dated October 3, 2017, the Claimant was informed that he was disqualified from the position of Skilled Signal Maintainer due to his inability to demonstrate the necessary skills required of the position.

By letter dated October 9, 2017, the Organization requested a Rule 57 Unjust Treatment hearing, which was held on November 1, 2017. Following the Unjust Treatment hearing and by letter dated December 7, 2017, the Carrier sustained the Claimant's disqualification as a Skilled Signal Maintainer.

The Organization argues a) the Carrier failed to provide substantial proof during the Unjust Treatment hearing to support its decision to disqualify the Claimant, b) the Carrier justified the disqualification by using an incident from July 2017, whereby the Claimant had previously been disciplined, arguing that it was improper for the Carrier to add disqualification to the discipline after the fact, c) the Carrier justified the disqualification by using a second incident from August 29, 2017, although no violation actually occurred, and d) the Carrier justified the disqualification by citing an event that occurred after the disqualification had already occurred.

The Carrier argues a) the Organization is attempting to discount each of the events cited by the Claimant's Manager as the basis for the disqualification, b) the totality of performance issues cited provided more than substantial proof to justify the Claimant's disqualification.

The Claimant has been employed with the Carrier for over forty years and had held the position of Skilled Signal Maintainer for over twenty years before his disqualification. During the Unjust Treatment hearing, the Claimant's Manager testified that his decision to disqualify the Claimant was based upon two events. The first event cited by the Manager concerned an incident occurring on July 21, 2017, whereby the Claimant was charged with violating Rule 56.1.3: Compromising Signal System Safety. The Claimant accepted responsibility for the July 21, 2017 incident and signed a waiver indicating such on August 21, 2017. The second event cited by the Manager concerned an incident occurring on August 29, 2017, whereby the Manager

testified that he preempted the Claimant from causing an on-track safety violation by reminding the Claimant of his need for a north warrant. [Transcript, page 34]

After a thorough review of the record, the Board finds the Carrier failed to provide substantial evidence to support its decision to disqualify the Claimant. As indicated above, the Claimant's Manager based his decision to disqualify the Claimant upon the two events that occurred on July 21, 2017 and August 29, 2017, with the August 29, 2017 incident being the triggering event. However, a review of evidence concerning the August 29, 2017 incident failed to support the Carrier's decision to disqualify the Claimant.

The Claimant's Manager worked with the Claimant on August 29, 2017 and contemporaneously completed several documents regarding his observation of the Claimant on that date. [Exhibits 9.1, 9.2, 9.3] None of the offered documents indicate an issue regarding the potential lack of the north warrant / on-track safety issue triggering the disqualification, although they do indicate the Claimant was coached by the Manager on several other performance-related issues (wearing his seatbelt and avoiding slips, trips, and falls). In other words, there is no negative commentary on any of the documents contemporaneously completed by the Claimant's Manager regarding the triggering event which led to the Claimant's disqualification, although other performance-related issues were addressed on those same documents. Furthermore, the Claimant continued to work as a Skilled Signal Maintainer from August 29, 2017 until October 3, 2017. The Claimant's Manager testified that he had another employee work with the Claimant on occasion after August 29, 2017 to ensure the Claimant was being safe, and testified that he did not hear any complaints from the co-worker regarding the Claimant's work practices. [Transcript, page 37]

Based upon the above, and the unique facts and circumstances presented in this specific case, the Board finds the Carrier lacked substantial evidence to support its decision to disqualify the Claimant. The Board was notified that the Claimant retired in November 2018. As such, the Claimant is to be compensated for any difference in pay between the Skilled Signal Maintainer position and the position he held after his disqualification, up to the date of his retirement. The Board must note that the fact pattern in this case is unique and holds that this award is not to 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 sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of September 2020.