

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44468
Docket No. SG-45532
21-3-NRAB-00003-190417**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
Corporation (NIRC/METRA)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp. (METRA):

Claim on behalf of M.D. Thaxton, for compensation for 40 hours a week from June 8, 2017, until Claimant is returned to service. Carrier violated the current Signalmen’s Agreement in particular Rules 5, 7, 13, and 81, when they didn’t allow the Claimant to exercise his seniority to a position because he had no driver license. Carrier’s File No. 11-2017-8. General Chairman’s File No. 20-S-17. BRS File Case No. 16090-NIRC. NMB Code No. 117.”

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 Organization claims that the Carrier violated the Agreement when it denied the Claimant that opportunity to use his seniority for another position in the Signal Department that did not require a driver's license. The Claimant's license had been suspended due to a DUI and he was no longer able to meet the requirements of his bid position. The Organization contends that the Carrier violated the Agreement when it unilaterally changed all jobs to which the Claimant could have displaced to require a valid driver's license. In support, the Organization cites to statements of Mr. Spargo and Mr. Harwell as two employees who were allowed to displace in order to work Signal Department positions that did not require a driver's license. Further, the Organization includes prior job announcements that did not require a valid driver's license.

The Carrier responds that the claim was not timely and is therefore barred. On the merits, the Carrier maintains that the Claim is unsupported by the record. There is no binding past practice that can be established by the Organization. The two statements indicate that two employees were able to work in the shop. However, they did not establish a past practice. Further, the Carrier has required a valid driver's licenses from Signal Department employees for a number of years.

An examination of the record in this matter indicates that the Carrier first asserted a timeliness defense during the appeals process. Just as the Organization cannot include new and additional claims during the appeals process, the Carrier cannot include additional new and additional defenses during the appeals process. Accordingly, the Carrier's timeliness defense is untimely and rejected.

On the merits, this Board has reviewed the Organization's arguments that the Claimant was improperly disqualified: based upon the past practice of assigning employees unable to drive to the Shop; that the Carrier does not require driver's licenses for all Signals Positions, and that the Carrier unilaterally changed the job requirements for Signals Positions when it required driver licenses of all Signals employees.

A review of the record indicated that there are two undated statements from two employees who were allowed to work in the Shop – one of whom was there during a DUI suspension. There are also job listings from the 1990s. There is nothing recent in the record regarding the job listings that do not require a driver's license. In order to establish a past practice, clarity, consistency, and acceptance of the practice are required. It is unclear from the record how the employees were assigned to the Shop. Simply, two statements and decades-old job bulletins do not establish the clarity and consistency required to establish a past practice.

The Carrier also asserts that not only does it have the Agreement right to establish job qualifications, but also that a driver's license has been a requirement since at least 2017 for all Signals positions.

Here, the evidence shows that, although there may have been bulletined positions in the 1990s that did not require a driver's license, there is no evidence that those positions have existed in more than twenty years. The burden is on the Organization to establish the violation. The Organization has not met that burden.

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 10th day of June 2021.