

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44822
Docket No. SG-46623
23-3-NRAB-00003-210209**

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX TRANSPORTATION, INC.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):

Claim on behalf of E.D. Parker, for compensation for the difference in pay between Signal Maintainer position and Signal Inspector rate of pay for all hours, including overtime, on his current position beginning August 16, 2019, continuing until he is given proper training and allowed to work the position and test within the timeline specified in the Agreement, account Carrier violated the current Signalmen’s Agreement, particularly Rule 45, when it provided inadequate training and tested prior to the specified 30 days, causing him to work a lower rated position. Carrier’s File No. 19-74179. General Chairman’s File No. 19-67-01. BRS File Case No. 16368-L&N. NMB Code No. 105.”

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 July 22, 2019, Claimant E. D. Park exercised his seniority to the position of Signal Inspector, a position he had not held before. After receiving training on the position, the Claimant was tested on August 16, 2019. The Claimant was unable to pass the test, and he was disqualified from the position.

The Organization submitted a claim on October 15, 2019, contending that the Carrier violated Rule 45 of the applicable agreement when it disqualified the Claimant after 26 days, rather than 30 days as provided in Rule 45. It alleged that the Claimant put forth an effort to learn the new position, but that he was not given the training needed or the proper time to qualify on the position. The claim requested that the Claimant be paid the difference in the rate of pay between the Signal Maintainer position and the Signal Inspector position for all hours worked.

The Carrier denied the claim, stating that there had been no agreement violation. It stated that when the Claimant reported for the Signal Inspector position, he worked with a Maintainer to become familiar with the physical characteristics of the territory, and then with both the Maintainer and an Inspector until August 2, 2019, when he was interviewed to assess his progress toward becoming qualified. The Carrier listed nine specific areas where it was determined that the Claimant could not perform necessary tasks, and it stated that the Claimant was informed of the deficiencies, after which he was again assigned to work with another Inspector, as well as Maintainers, to gain familiarity with the position and the territory involved.

The Carrier added that the Claimant met with his manager again on August 16, 2019 to evaluate his progress, at which time it was determined that he could not perform the duties of a Signal Inspector and was still deficient in eight of the areas previously identified. The Carrier stated that, because the Claimant could not demonstrate the minimum qualifications for the Inspector position, he was notified that he was being disqualified and it was suggested that he exercise seniority to a signal maintenance position, where he could gain additional experience before retrying for the Inspector position.

The Organization submitted an appeal, denying that the Claimant had received appropriate training for the Inspector position. It alleged that the Maintainers the Claimant worked with initially were not from the Claimant's territory, and that when the Claimant did work with an Inspector, the training was for less than a week. The Organization reiterated its claim that the training had been cut short.

The Carrier denied the appeal, again noting the numerous specified areas in which the Claimant had failed to demonstrate proficiency. It maintained that the Claimant received appropriate training and assistance during the qualification period, working with both a qualified Inspector and a Maintainer who was qualified on the territory, in an attempt to assist the Claimant in becoming familiar with the territory and the duties and responsibilities of the position. The Carrier noted that, after the first progress review, in which the Claimant could not perform nine of the required skillsets to qualify for the position, the Claimant was given additional time to qualify, but that two weeks later he still lacked eight of the necessary skillsets. It supplied documentation detailing the training and the specific items the Claimant was unable to perform. The Carrier asserted that it has the right and prerogative to determine the fitness, ability, and qualifications for a position, and that in this case the decision to disqualify the Claimant from the Inspector position on the 26th day of the 30-day qualification period was not arbitrary or capricious.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the agreement in question is clear and unambiguous, and that the Carrier was obligated thereunder to give the Claimant any requested advice or instructions as to the work assigned. It denies that the assistance the Claimant was provided was adequate, or that it was appropriate for him to receive training from Maintainers or to be familiar with the territory. The Organization notes that the Claimant had 21 years of service, and that while he had limited maintenance experience, he was honest with the manager when questioned about maintenance and various tests associated with the position. It states that the Carrier was obligated by the agreement to give the Claimant a full 30 days of training to address those matters, and that the failure to do so, as well as the Carrier's failure to provide sufficient evidence to support its disqualification determination, requires that the claim be sustained.

The Carrier, on the other hand, reiterates its position that the Claimant was given the opportunity to qualify with appropriate assistance, yet he continued to display a dangerously inadequate level of proficiency in the job responsibilities. It points to the manager's statement which documented the Claimant's inability to perform even the most basic responsibilities after almost 30 days on the position, and, citing prior award authority regarding curtailed qualification periods, it asserts that it

is clear that four more days would not have made any difference in the Claimant's ability to perform the essential requirements of the position. The Carrier posits that the Organization has not met its burden of proving an agreement violation in those circumstances.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we are unable to find that the Organization has established a violation of the cited agreement. While the rule imposes an obligation on the Carrier to provide assistance during an employee's qualification efforts, we do not find that the assistance offered here was inappropriate or unconnected to the Inspector position, and it is apparent that the Claimant's unfamiliarity with the job requirements of an Inspector was of an extent that it would not be remedied with an additional four days of training.

In qualification matters such as this, it is generally held that a Carrier's assessment will not be overturned if the judgment is not arbitrary, capricious or devoid of factual basis, and we find no indication that the Carrier's judgment here met such criteria. The Carrier supplied specific, itemized details of the areas in which the Claimant lacked proficiency, and we find nothing in the record to refute those factual assertions. It is fundamental that the Organization bears the burden of proving that the challenged action is contrary to the applicable agreement provisions, and we find that the facts presented here are insufficient to meet that burden. Therefore, we must deny the claim.

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 21st day of December 2022.