

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44860  
Docket No. SG-46346  
23-3-NRAB-00003-210015**

**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: (  
(Canadian Pacific Railway**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific Railway (formerly Soo Line):**

**Claim on behalf of C. D. Justman, for reinstatement to his former position with any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 29, 32, and 39, when on May 29, 2019, it assessed the harsh and excessive discipline of a forced resignation to the Claimant without allowing Claimant to continue working as an Assistant Signalman. Carrier’s File No. USA-SOO-BRS-00008982. General Chairman’s File No. 2019-00008982. BRS File Case No. 16319-SOO. NMB Code No. 32.”**

**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 October 12, 2009, Claimant C. D. Justman was hired by the Carrier within its signal department, but his employee transcript indicates he apparently had some difficulty passing the Signalman/Signal Maintainer qualification test. On June of 2016, the Claimant signed a waiver accepting a 30-day suspension after he failed to follow deactivation procedures at a crossing. The waiver stated that the Claimant would be limited to working on an S&C construction crew under the guidance of an S&C Foreman for a period of two years, after which the parties would meet and determine his ability to demonstrate proficiency and remove the restriction. The terms of the waiver were modified by letter agreement dated December 28, 2017, to allow the Claimant to work a maintenance position under the guidance of an S&C Maintainer.

By letter dated October 26, 2018, titled Demotion and Restriction of Service/Last Chance Agreement, the Carrier notified the Claimant that he had failed to successfully pass all the modules in the signal school course program, and that he was subject to termination, but that as a matter of managerial leniency, he would be allowed to continue employment under several conditions. They included the Claimant's demotion to Assistant Signalman and the requirement that he requalify as a Signalman/Signal Maintainer by passing the Signalman/Signal Maintainer Qualification Test before April 29, 2019. The letter advised that should the Claimant fail to qualify as a Signalman/Signal Maintainer within those timelines, his failure to prove proficiency may result in his termination.

On May 10, 2019, the Claimant took the Signalman/Signal Maintainer Qualification Test, but he was unable to pass. Consequently, the Carrier notified the Claimant that he was being withheld from service until the facts could be determined through investigation. By letter dated May 29, 2019, however, the Carrier notified the Claimant that, due to his failure to pass the test, in accordance with the October 26, 2018 letter and the collective bargaining agreement, he was considered to have relinquished his seniority and resigned from employment.

The Organization initiated the instant claim on the Claimant's behalf, contending that the Carrier had improperly disciplined the Claimant without holding a hearing as required by the CBA, and that the Carrier had relied on a rule that was no longer applicable to terminate the Claimant's employment. It also stated that, in light of his length of service, the Claimant was entitled to preference to work he could handle, citing Agreement Rule 39. It asserted that in the absence of the technical ability to perform Signalman duties, the Claimant could certainly perform the duties of an Assistant.

The Carrier denied the claim, noting the multiple opportunities the Claimant had been afforded to qualify. It stated that the Claimant was required by the agreement to pass exams and take promotion, and that his inability to do so resulted in his imputed resignation as provided in the agreement.

The parties handled the claim through the on-property appeal process, but they were unable to reach a resolution. The matter now comes to us for determination, with the parties' positions being essentially the same as those described in the on-property handling.

We have thoroughly reviewed the parties' arguments, and we find that the Organization has not met its burden of establishing an agreement violation. Rule 30(b)(5) of the applicable agreement provides as follows:

“Failure of an Assistant to pass a re-examination will result in such employee's forfeiture of all seniority rights and such employee will be considered to have resigned from the service.”

We believe that the Carrier appropriately relied on that agreement provision, and that its determination that the Claimant was considered to have resigned is justified in light of the Claimant's inability to pass the required examinations. The Claimant's test results are included in the record, and they confirm the Carrier's description of them. We are not unsympathetic to the Claimant's circumstances, but the agreement is clear, and the Carrier has the right to apply it as it did in this instance. 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 10<sup>th</sup> day of March 2023.