

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45263  
Docket No. SG-47649  
24-3-NRAB-00003-220589**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(BNSF Railway Corporation**

**STATEMENT OF CLAIM:**

**“Claim on behalf of L. Byerly, for reinstatement to service with compensation for all time lost, including overtime pay, with all rights and benefits unimpaired, with any mention of this matter removed from his personal record and enrolling him into the Signalman’s Apprentice Training Program (SATP), account Carrier violated the current Signalmen’s Agreement, particularly Rule 30(H), when it failed to return the Claimant to re-test at Carrier’s training facility in Johnson County Community College (JCCC) and testing him in the field in an inconducive environment for test taking and dismissed him when he failed his test. Carrier’s File No. 35-21-0049, General Chairman’s File No. 21-021-BNSF-20-C, BRS File Case No. 5329, NMB Code No. 310 - Contract Rules: Qualifications & Training.”**

**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 Claimant in the instant case was assigned as an Assistant Signalman on the Chicago Seniority District on Signal Crew SSCX0 142. The work schedule for the Claimant's crew is Monday to Thursday from 0700 am to 1730 pm with a thirty minute lunch. From January 4 through January 15, 2021, the Claimant attended the Signalman's Apprentice Training Program ("SATP") at the Technical Training Center at Johnson County Community College ("JCCC") in Overland Park, Kansas. The Claimant did not pass his Second Step Exam.

This dispute arose on February 3, 2021, when the Carrier administered the Claimant's re-examination test at a field office location, rather than its training facility at JCCC. The Claimant failed the re-examination and was dismissed by the Carrier pursuant to Rule 30(I).

In a letter dated February 8, 2021, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated March 31, 2021. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier violated the controlling Agreement, particularly Rule 30, when it administered the re-examination of the Second Step Test in the SATP for the Claimant at a facility other than the Carrier's training facility as outlined within Rule 30 of the Agreement.

In 2018, the parties negotiated new provisions for Rule 30, setting forth their agreement in a Letter Agreement dated March 14, 2018. The new Rule 30(H) provides:

- H. The initial classroom course will be given as soon as practicable after employment and subsequent classroom courses will be scheduled as nearly as practicable so that there will be an equal period between courses, so that employees will have an opportunity to progress from one training period to another. Classroom and OJT instruction shall be held at such points as may be designated by the Carrier. Uniform, written, progressive examinations will be based on course training material and/or material presented in class by the instructor. A grade of eighty percent (80%) or better shall be considered a passing grade. If an employee successfully passes the written examination and demonstrates proficiency of OJT for that required session, he will be advanced to the next training period. In the event of failure to pass any examination, re-examination shall be given within thirty (30) days

from date of such failure, on the entire examination which he previously failed. He shall be graded on the entire re-examination, using the same grade factor as used in the previous examination which he failed. If an employee fails to demonstrate proficiency in any portion(s) of OJT at the field training site, they shall be given the opportunity to demonstrate proficiency on failed portion(s), through reexamination, given within thirty (30) days from date of such failure. The reexamination will be administered at carrier's training facility.

The Organization contends that the language of Rule 30 is clear and unambiguous. Re-examinations of the SATP tests must be conducted at the Carrier's training facility, or JCCC. The Organization contends that the Carrier failed to comply with this clear requirement when it directed the Claimant to take his re-examination in the Carrier's field office. The mandatory language of Rule 30(H) refers to a single "training facility," and does not permit re-examination at any other facility in the Carrier's network. The parties recently renegotiated this provision and the Carrier never sought the right to use multiple facilities for retests.

The Organization contends that the Carrier's alleged past practice of using other facilities should be rejected, as repeated violations of clear contract language will not modify an unambiguous provision. In addition, the Organization contends that the Carrier has failed to prove that the Organization was aware that the Carrier was using facilities other than its training facility for retesting or that the Organization agreed that the Carrier's alleged practice was proper.

The Carrier contends that the Organization has failed to prove a violation of the Agreement. The Carrier contends that the Claimant was given an opportunity to take a re-examination test after failing on his first try, but was not successful. In accordance with the provisions of Rule 30(I), the Claimant was dismissed from the Carrier's service.

The Carrier contends that the Organization has failed to show that the parties intended that all re-examinations must occur at JCCC in the Technical Training Center. The Carrier contends that re-examinations have occurred in the field across the Carrier's network for years, without objection from the Organization.

The Carrier contends that since 2018, 37 re-examination tests have been administered in the field without complaint by the Organization. The Carrier contends that the record shows that all SATP re-examination tests have been conducted in the

field. The Carrier contends that the record demonstrates that JCCC is not the only place that examinations occur.

The Carrier contends that the location of the Claimant's first examination took place at JCCC, and the Claimant failed the examination. His second examination was conducted at the Carrier's "facilities in areas conducive to a testing environment," but the Claimant was still not successful. The Carrier contends that the Claimant's re-examination test was conducted in an enclosed building with a door for privacy. The Carrier contends that the Organization has failed to show that the outcome would have been different if the Claimant had been tested again at JCCC.

There is no dispute as to the facts that led to this claim being filed. The Claimant was directed to take his second level SATP re-examination at a Carrier's field office, which the Carrier described as a facility in an area "conductive to a testing environment." He was not given the option of taking the re-examination at the Technical Training Center at JCCC. The Claimant believes that the environment at the field office was not favorable to success, as he described a number of interruptions and distractions that occurred due to the everyday purpose of the facility.

Rule 30(H) states unequivocally, "The reexamination will be administered at carrier's training facility." The field office where the Claimant's reexamination was administered was not the Carrier's training facility. The Carrier argues that the parties did not intend for reexaminations to occur only at JCCC, or they would have named it in the Agreement. It may be in the future, the Carrier may use a facility other than JCCC for its training, but at the time of the events herein, there is no question that the Carrier's training facility was the Technical Training Center at JCCC. The parties agreed to one location: the Carrier's training facility. They both understood what was being referred to. The Carrier's understanding that the field office is not the training facility is demonstrated by its description of the field office as an area "conductive to a testing environment." The mandatory language of the provision does not offer the Carrier the option to conduct reexaminations in other locations, even when it may be more convenient to do so.

The language in Rule 30(H) is clear and unambiguous. Referee Benn wrote in First Division Award 35515,

[A] fundamental rule of contract construction is that clear language must be enforced even if harsh or against the expectations of one of the parties. This is such a case. The language is clear. The result is unavoidable.

The Carrier presented evidence that it had regularly been administering reexaminations in the field without objection from the Organization, essentially arguing that a past practice existed. However, an essential element of a past practice is mutual agreement that the contrary practice is the way things “ought to be done.” The Organization denied that it was aware that the Carrier was conducting reexaminations in locations other than its training facility. The Carrier offered no evidence of the Organization’s knowledge of or acquiescence to the practice.

Even if the Carrier had proved the elements of a past practice, this Board has consistently held that when the language of the parties’ agreement is clear and unambiguous, this Board need look no further than the negotiated language agreed to by the parties to resolve their dispute. It is only appropriate to consider past practice or other interpretative aids when the provision is ambiguous.

When the parties have negotiated clear language, it must prevail. Evidence of a practice contrary to clear negotiated language is nothing more than evidence that a party has been violating the Agreement. In Third Division Award 456, Referee Devaney wrote,

The Carrier’s argument to the effect that long practice permits this action is not sound. Continued violation of existing rules does not change or diminish the binding effect of such rules. If change in the agreement is desired, that result must be attained in the prescribed manner and through the proper channels.

The Organization has proven that the Carrier violated Rule 30(H) by not administering the Claimant’s reexamination at its training facility at the Technical Training Center JCCC. The Claimant must be given the opportunity to reenroll in the SATP and sit for the reexamination under the conditions spelled out in the Agreement: at the Carrier’s training facility. Once the Claimant indicates his readiness to reenroll in the SATP, the Carrier shall take steps to reenroll him and apply the provisions of Rule 30 as written. The Claimant is not however, entitled to back wages for the intervening period as he did not successfully complete the SATP. Once the Claimant is reenrolled in the SATP, he is entitled to the wages and benefits provided to any other member of the class. His seniority will remain unimpaired.

**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 14<sup>th</sup> day of May 2024.