

Award No. 6271

Docket No. 6080

2-BN-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**BURLINGTON NORTHERN, INC.
(FORMERLY GREAT NORTHERN RAILWAY COMPANY)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Burlington Northern, Inc. (former Great Northern Railroad Company) violated the provisions of Rule 4(b) and Rule 26(e), (f), and (g) when on May 14, 1968, Carman Joseph Jerome, Superior, Wisconsin, was disqualified as assistant wrecker engineer and ground man on the Superior, Wisconsin, wrecking crew.

2. That accordingly, Carman Joseph Jerome be reinstated to the Superior wrecking crew; that bulletin dated May 14, 1968, disqualifying said employe from the assistant wrecker engineer and ground man position be canceled and stricken from the record, and

3. That Carrier be required to compensate Carman Joseph Jerome fifty-five (55) hours and forty-five (45) minutes for May 18 and 19, 1968, fifty-four (54) hours on May 22, 23 and 24, 1968 and thirty-three (33) hours on June 9, 1968, a total of one hundred forty-two (142) hours and forty-five (45) minutes, all at the pro rata rate, for wrecking service Carman Jerome was deprived of on May 18, 19, 22, 23, 24, 1968 at Gun, Minnesota, and on June 9, 1968 at Floodwood, Minnesota, as a result of the Carrier's arbitrary notice served on May 14, 1968, and for all other compensation loss subsequent to the aforesaid dates where Carman Jerome was deprived of compensation as a result of said notice.

EMPLOYEES' STATEMENT OF FACTS: At Superior, Wisconsin, the Burlington Northern, Inc., hereinafter called the Carrier, maintains a wrecking outfit and regularly assigned wrecking crew, which are assigned by bulletin under Rule 88 of the agreement. .

The wreck crew at Superior consists of a wrecking engineer, assistant wrecking engineer and a limited number of ground men.

Award 5152, (MA vs. C&NW, Referee Harwood)

"The Second Division has often held that, in the absence of a showing that Claimant suffered loss in pay, a money claim is not valid. Here the job was bulletined, yet there is no record that Claimant Seeley bid for it. Also, it appears that said Claimant has been steadily employed as a machinist and that he has suffered no loss in pay; neither is there a showing that he would have been called to work at overtime. See Second Division Awards 3672, 3967, 5083, 4086 and 4112."

In Second Division Award 5492 claims of wrecking crew for time lost when not permitted to accompany the wrecker outfit were sustained for "the difference between what they received and what they would have received had they accompanied outfit."

In the instant case there was of course no rule violation or breach of contract on the part of the Carrier, and the argument immediately preceding is designed only to show that the claim for duplicate or penalty payment could not prevail even if rule violation could be established.

In the light of the complete record as herein set forth, the Carrier reiterates its opening contention that its action in disqualifying the claimant and removing him from the position of Assistant Wrecker Engineer was fully justified and should not be disturbed. The claim should therefore be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

On June 1, 1967, a position was advertised at Superior, Wisconsin, for an Assistant Wrecker Engineer, to work as Groundman when not used as Assistant Engineer. The Claimant was the successful bidder and was awarded the position on June 9, 1967.

The Carrier contends that Claimant failed to exhibit any interest in the wrecking derrick equipment and took no action to qualify himself for its operation. There is evidence in the record that assistance was offered by both the Wrecker Foreman and Wrecker Engineer. The Claimant was disqualified and removed from the position, effective May 14, 1968.

Rule 4(b) of the Agreement provides that if one is found to be unqualified after being given a fair trial, he will be permitted to return to his former position.

We believe that the Claimant was given a fair trial. The Organization bases their claim upon the fact that Claimant was not allowed to operate the wrecking derrick while clearing a wreck or making lifts of heavy equipment.

Third Division N.R.A.B. Award 15494 (Zumas) states:

"The primary question to be determined in this dispute is whether the Carrier, in refusing to assign Petitioner to the position of Crane Foreman, acted in an arbitrary and capricious manner.

While the answer to this question is to be decided by an examination of the facts, this Board is guided by certain precepts and rules so universal as to require no citation of authority.

Carrier has the exclusive right to determine the fitness and ability of an employe for a position; and such determination will be sustained unless it appears that the action was arbitrary or capricious. * * *."

We cannot find that the Carrier's action was arbitrary or capricious. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1972.

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