

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Blaine Brown to service as a Maintenance of Way Machinist, the position on which disqualified, and compensate him for all lost pay up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist Blaine Brown be restored to service with seniority unimpaired and compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued to him and were lost during this period, in accordance with Rule 7-A-1 (e) of the prevailing agreement effective May 1, 1979.

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 employes 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.

The Claimant was furloughed August 1, 1981 as a Machinist at the Carrier's Stanley Diesel Terminal in Toledo, Ohio. On September 24, 1981, the Claimant was assigned to work as a mechanic in a Maintenance of Way Department Track Gang. Pursuant to a bid, the Claimant was awarded the mechanic's position effective October 12, 1981. The Claimant was advised on November 3, 1981 by D. H. Mack, Equipment Supervisor, that he was disqualified as a mechanic. This was confirmed that day in a memorandum from Equipment Supervisor Mack to the Claimant in which he stated the following:

"Mr. Brown, you have been working for 30-35 days in our department. I, D. H. Mack, Supervisor, Jeff Kopke and Acting Equipment Foreman, H. G. Jones, feel that you, Mr. Brown, do not have the qualifications necessary to keep the equipment in good repair. I, D. H. Mack, feel that you have to be told every move to be made. The rest of the men have no trouble working without constant supervision. Mr. H. G. Jones and I feel by talking to you on November 3, 1981, that you depend on C. Bureau to tell you or show you how to repair equipment that is your responsibility to repair.

"Mr. Brown, you show no interest in our equipment. Mr. Jones and myself have been out to your gang many times to see you just sitting in your truck. Things that should be repaired by you take twice the normal repair time.

"At the end of this 3rd day of November, 1981, you will have to find work elsewhere. I, D. H. Mack, recommend that you try to get a job back at the Diesel Shop. It seems that you might be more qualified there."

It is well established that the determination of an employee's qualifications to perform the work of a particular position is the prerogative of the Carrier. If such prerogative is not exercised in an arbitrary, discriminatory or capricious manner, the Board will not substitute its judgment for the Carrier. See Third Division Awards 4040 and 6028. The facts giving rise to the instant dispute must be evaluated in light of these controlling principles.

At the outset, it should be noted that as the Organization acknowledges, the Claimant worked on the TK tie gang for roughly 35 days before he was disqualified by the Carrier. Equipment Supervisor D. H. Mack, Acting Equipment Foreman H. G. Jones and Jeff E. Kopke, Assistant Track Supervisor, determined that during this period of time, the Claimant was responsible for excessive Production Gang down time and overtime payments. Furthermore, they indicated that the Claimant would not, or could not, keep the production equipment in operable condition. He also required excessive amounts of time of the supervisors and other mechanics in attempting to keep the track machines operating.

As opposed to these critical and adverse determinations, the Organization submitted three (3) letters of recommendation on behalf of the Claimant. Martin Sapp, who was Major Foreman during the period of time that the Claimant worked on the TK tie gang, stated that the Claimant "was not given ample breakin period with a qualified mechanic before being put on his own." Moreover, he indicated that the Claimant handled problems and repairs with which he was not familiar. Major Foreman Sapp went on to state that the Claimant was "as qualified as any mechanic that was working for TK 361 at the time." Similar letters of approval and satisfaction of the Claimant's work during the period in question were written by Foreman Isaac and "a Foreman of the gang" in question.

It was stated in Third Division Award 4040 that the Board will not substitute its judgment for that of the Carrier if the evidence supporting such action is substantial "even though there is other evidence of such character that reasonable minds might differ as to the construction to be placed upon all the evidence when considered in its entirety". Despite the letters of approval of the Claimant's work, the action of the Carrier is supported by substantial evidence. The supervisors whose opinions support the Carrier's determination that the Claimant lacked the qualifications necessary for the Maintenance of Way Machinist position were familiar with the work performance of the Claimant during a reasonable period of time and were familiar with the requirements of the job. Furthermore, there is nothing in the record to indicate that their evaluation of the Claimant's qualifications was biased or prejudiced.

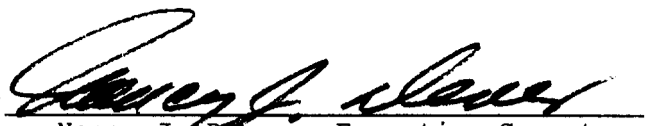
In light of the supervisor's opinions that the Claimant lacked the qualifications necessary for the Maintenance of Way Machinist position, this Board cannot conclude that the Carrier's decision to disqualify the Claimant was arbitrary, discriminatory or capricious. Moreover, under Rule 2-A-3, the Claimant was afforded a fair opportunity to demonstrate his qualifications for the position of mechanic but failed to qualify for the position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of September 1985.