

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39847  
Docket No. CL-40010  
09-3-NRAB-00003-070213  
(07-3-213)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(National Railroad Passenger Corporation (Amtrak))

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-13180)  
that:

- (1) The Carrier acted in an arbitrary, capricious and unjust manner violating Rules 5, 8 and other related rules of the Agreement, when on September 10, 2004, the Carrier disqualified the Claimant (Kurt Bauer) from working Lumber Street Tower.
- (2) Carrier shall now be required to immediately return the Claimant to his Train Director position at Lumber Street Tower and offer him proper supervised training.
- (3) Carrier will now be required to immediately compensate the Claimant at the overtime rate of pay for any days he has worked that would have been rest days on his regularly assigned position at Lumber Street Tower.”

**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.

Many of the basic facts of the instant case do not appear to be in dispute. Prior to the events that resulted in this claim, the Claimant held a Train Director position in the General Bulletin Office in Chicago. Pursuant to Rule 5 – Promotion, the Claimant was adjudged to have sufficient fitness and ability to bid on a Train Director position at Lumber Street Tower. The Claimant was assigned to and began to qualify for the Lumber Street Tower position on June 1, 2004. On September 9, 2004, while still attempting to qualify for the Lumber Street Tower position, the Claimant misrouted METRA 1232, a live passenger train, towards a track occupied by another train. On the following day, September 10, 2004, the Claimant misrouted METRA 1258, a live passenger train, toward a track occupied by another train. Pursuant to these errors, Trainmaster T. Pape sent the Claimant home and disqualified him from the Lumber Street Tower position.

The Organization contends that the Carrier violated the Agreement when it disqualified the Claimant from the Lumber Street Tower position. According to the Organization, the Claimant was disqualified in an arbitrary, capricious and discriminatory manner in violation of Rules 5 and 8 of the Agreement. The Claimant had the fitness and ability to become qualified for the position, but he was not properly trained. As a remedy, the Organization requests that the Claimant be reinstated to his position at Lumber Street Tower and offered him properly supervised training. In addition, the Claimant should be compensated at the overtime rate of pay for the days he worked that would have been rest days on his regularly scheduled position at Lumber Street Tower.

Conversely, the Carrier contends that it acted properly in disqualifying the Claimant from the Lumber Street Train Director position. According to the

Carrier, the Claimant engaged in very significant errors when on two occasions he routed live passenger trains onto tracks that contained other trains. Therefore, the Carrier was well within its rights to disqualify the Claimant. The Carrier contends that it acted appropriately when it disqualified the Claimant from his position at Lumber Street Tower.

After a review of the evidence and positions of the parties, the Board finds that the Organization has been unable to meet its burden of proof. The Carrier has shown that it acted appropriately when it disqualified the Claimant from his position as Train Director at Lumber Street Tower. Therefore, the claim is denied.

**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 31st day of July 2009.