

The Second Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rules 37, 38 and 43, when they denied Electrician W. C. Terwilliger his right to face his accusers and due process following Electrical Supervisor B. E. Erickson unjustly disqualifying him in the Maintenance of Way Department by letter dated April 18, 1986, effective close of shift, Salt Lake City, Utah.

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electrician Terwilliger eight hours (8') pay for each day he has been denied work and all overtime plus interest at the prime rate.

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.

Claimant entered Carrier's service as an Electrician on October 17, 1979, at North Platte, Nebraska. He worked as a Mechanical Department Electrician at North Platte until May 24, 1984, when he was furloughed. He subsequently worked as an Electrician for short periods of time at Denver, Colorado. (9 days - May 29 to June 7, 1984, and 11 days - May 21 to June 1, 1985) and at Cheyenne, Wyoming (12 days - June 11 to 23, 1985, and approximately 50 days - December 20, 1985, to "first part of February, 1986").

In January, 1986, a permanent Electrician position was bulletined in the Maintenance of Way Department at Salt Lake City. This position had as its advertised duties:

"Electrical construction and maintenance, including outside wiring and line work per Rule 122 and 123 of the current Agreement, Utah Division."

No applications were received from Electricians in active service, and on February 10, 1986, Claimant was assigned to the position. Claimant remained on this position until April 18, 1986, when he was disqualified because:

" -- you have failed to successfully prove that you now possess the necessary skills and knowledge required to safely and effectively perform the work associated with this position."

On April 30, 1986, the Claim as outlined above was initiated on behalf of Claimant. During the on-property handling of this dispute, Organization argued that Claimant was denied "due process" because he was not afforded a Hearing prior to being disqualified and that this constituted a violation of Rules 37, 38 and 43 of the Rules Agreement. The Organization further contended that " -- an electrician is an electrician" regardless of the department in which they work and alluded to certain non-specific personality conflicts with the Supervision in the Maintenance of Way Department at Salt Lake City as a basis for Claimant's disqualification.

Carrier alleged that while Claimant was a qualified Electrician in the Mechanical Department where his duties consisted primarily of the maintenance of rolling stock, the knowledge and skills required as an Electrician in the Maintenance of Way Department on an electrical road gang were vastly different and that during the period from February 10 through April 18, 1986, Claimant was unable to successfully perform the duties which were assigned to him. Carrier further avers that the cited Rules (37, 38 & 43) have no application in a disqualification scenario, but rather are applicable only in a discipline situation which does not exist here. Carrier states, without contradiction, that Claimant was not dismissed from service, but rather, retained his Electrician seniority subsequent to his disqualification at Salt Lake City, and, in fact, "--has been working and is currently working as an Electrician."

Both parties cite with favor the decision of Public Law Board No. 3600 where, in its Award No. 6, a somewhat similar situation was addressed. In that case, the Board held that Carrier did, in fact, possess the right and responsibility to "set standards for jobs and to evaluate applicants for openings to see if their qualifications mesh with the requirements of the positions." In that case, the Claimant was judged unqualified after only two (2) days on the job. In that circumstance, the Board ruled that the Claimant therein "--should be given an adequate opportunity to demonstrate his ability as a M & W (sic) Electrician and to permanently qualify."

This Board agrees completely with the reasoned logic expressed in Award No. 6 of PLB 3600. However, in this case the record shows that the Carrier gave Claimant an adequate opportunity to demonstrate his ability as a M of W Electrician. It was only after Claimant had demonstrated over a period of more that two (2) months on the job that his qualifications did not mesh with the requirements of the position that Carrier exercised its managerial right to disqualify him.

We agree with the Organization when it says that the Rules which have been cited as having been violated "--are clear as to meaning and intent." Rules 37 and 38 clearly apply to suspensions and/or dismissals from service and rightfully require Investigations and/or Hearings prior thereto. Rule 43 clearly addresses the issue of physical examinations and the rejection of applications of new employees entering the service. However, this case does not concern itself with any of the situations which are outlined in these cited Rules.

It is our opinion, based upon the record as developed during the on-property handling of this case and after consideration of the presentation of the parties before this Board, that Claimant received all of the "due process" to which he was entitled under the Rules Agreement. His demonstration period was adequate. There is no proof that he was judged any less or more stringently than were others who held similar jobs. There is no proof that he was required to meet standards others on similar jobs are not required to meet. He was not dismissed from service, but rather continues to hold an employment relationship. There is no Rule which has been brought to our attention which requires a formal Hearing prior to disqualification. For all of these reasons, this Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1988.