

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12605
Docket No. 12504
93-2-92-2-24

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Chesapeake
(& Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) hereinafter referred to as 'carrier', violated the controlling shop crafts agreement, specifically Rules 1, 37, 38, 60½, 183 and 185, when the carrier improperly disqualified and dismissed Carman Paul Stapleton from service on December 18, 1989.
2. Accordingly, the carrier be ordered to additionally compensate Carman Paul Stapleton for all regular and overtime wages lost commencing on December 19, 1989 and continuing until Mr. Stapleton is permitted to return to actual service."

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.

Claimant's position was abolished at Carrier's Raceland Car Shop on December 15, 1989. Claimant exercised his seniority by displacing a junior employee in the Air Brake Shop. He was

assigned to test ABD emergency valves. Employees testing ABD valves average twenty test per shift. The first day Claimant worked in the Air Brake Shop he tested only four valves. On the basis of this performance, he was disqualified by Carrier's General Foreman.

This Board has previously held, in two Awards involving this facility, that an employee must be qualified for the position to which he is exercising seniority. Second Division Awards 12182 and 12190. The fact that Claimant was able to perform only twenty percent of the average amount of work expected of employees assigned to test ABD valves generates a strong presumption that he was not qualified for the position to which he exercised his seniority. The Organization offered nothing to overcome this presumption. The Claim is without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 27th day of October 1993.