

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13847
Docket No. 13718
05-2-03-2-54

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Association of Machinists and Aerospace
(Workers

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

"That Burlington Northern Inc. (hereinafter referred to as the "Carrier") violated Rule 22 of the Controlling Agreement, Form 12645-A Std., as amended, between the Burlington Northern Inc. and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the "Organization") when it wrongfully and unjustly declared Lincoln, Nebraska Machinist James Asche (hereinafter referred to as the "Claimant") to be unqualified to hold a Maintenance Machinist position and subsequently denied him his right to exercise his seniority and displace a junior employee.

Accordingly, we request that for this improper disqualification, the Claimant be allowed to displace any Machinist his junior, thus reinstating the rights he was incorrectly and improperly denied by the Carrier on January 25, 2000."

FINDINGS:

The Second 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.

The record developed by the parties through the exchange of correspondence on the property reveals the following:

By letter dated February 21, 2000, the Organization asserted that after being bumped from his position by a senior Machinist on January 25, 2000, the Claimant bumped junior Machinist D. Thomas on January 28, 2000. However, the Carrier notified the Claimant that he was not qualified to bump the junior employee. The Organization protested that action stating that the Claimant was not allowed to bump the junior Machinist, "even though this was the position Claimant occupied for a period of two (2) years prior to being bumped on January 25, 2000."

By letter dated April 18, 2000, the Carrier denied the claim asserting that no violation occurred "... since the issue is whether the individuals involved were qualified for a specific position, not as to their qualifications as a Machinist in general."

By letter dated June 7, 2000, the Organization again pointed out that the Claimant "had worked a Machinist Maintenance position for two (2) years prior to January 25 when he was displaced and his subsequent bump was disallowed by the Carrier on January 28, 2000." The Organization then inquired, "How can the Carrier justify and support their actions of claiming Machinist Asche was qualified to work a position for two (2) years and then state he is not qualified to work the position a mere two (2) days later"?

By letter dated August 3, 2000, the Carrier responded:

* * *

Machinist Asche was not allowed to displace Machinist Thomas as he was not qualified on the position. Rule 22(g) reads as follows:

"The exercising of seniority to displace junior employees, which practice is usually termed "rolling" or "bumping", will be permitted only when existing assignments are cancelled, in which case the employee affected may, within five (5) days, displace any employee his junior whose position he is qualified to fill."

The key wor[d] in the above is "qualified." Machinist Asche was not allowed to displace on a position that he was not qualified to fill.

* * *

As Machinist Asche was not qualified on the position, this grievance is respectfully denied in its entirety.

The above is the substance of the record developed through the exchange of correspondence on the property.

In its submission to this Board, the Carrier states at p. 2:

"... The maintenance position to which he [the Claimant] had been assigned did not require crane inspection certification nor was it required that he be able to operate a milling machine or a lathe. On January 28, 2000, Claimant attempted to displace junior Machinist Dennis E. Thomas on a maintenance position that required crane inspection certification and the operation of a milling machine and a lathe.

... Claimant was not allowed to displace Machinist Thomas as he was not "qualified" to fill the position. Claimant then displaced on a Machinist position that he was qualified to fill.

* * *

As information, Claimant later attended South East Community College and completed training so that he would be qualified for similar maintenance positions in the future. Subsequent to his completion of this training, Claimant bid on and was assigned to a maintenance position that required crane inspection certification and operation of a milling machine and a lathe."

As the Carrier points out in its August 3, 2000 letter, Rule 22(g) provides that "[t]he exercising of seniority to displace junior employees ... will be permitted only when existing assignments are cancelled, in which case the employee affected may, within five (5) days, displace any employee his junior whose position he is qualified to fill." The Carrier also properly points out in that letter that "[t]he key wor[d] in the above is 'qualified'."

A determination that an employee is not qualified to fill a position is a managerial decision which this Board will not disturb unless there is evidence that the Carrier's decision is arbitrary. A Carrier makes an arbitrary decision when it is shown that the decision is without a rational basis, justification or excuse.

In terms of whether the Claimant was "qualified" to displace the junior Machinist Thomas, the record as developed on the property shows that the Organization contended that the Claimant was qualified because the Claimant had worked a Machinist Maintenance position for two years prior to his being displaced by a senior employee. In response, in the record as developed on the property, all the Carrier stated was that the Claimant was not qualified. Had the Carrier pointed out facts like those quoted above from its submission (i.e., requirements for crane inspection certification and operation of a milling machine and a lathe) and shown why it determined that such certification and requirements were necessary, perhaps the result in this case would have been different. But this Board is limited to the facts in the record as developed on the property - and those facts only show the Carrier stating that the Claimant was not qualified after the Organization stated that the Claimant had held a Machinist Maintenance position for two years prior to his being bumped.

In the face of the Organization's showing on the property, the Carrier had to do more than simply state the Claimant was not qualified. When the Organization made its showing that the Claimant had held a Machinist Maintenance position for two years prior to his being bumped, the burden shifted to the Carrier to further

explain why it determined that the Claimant was not qualified - i.e., the Carrier had to articulate a rational basis, justification of excuse for its determination. The Carrier was obligated to respond on the property with facts and assertions similar to those made in its submission. But this Board cannot consider the additional facts asserted in the Carrier's submission. The Organization did not have the opportunity to refute those new facts.

We therefore find, based upon the limited facts developed by the parties on the property, that there was no rational basis, justification or excuse for the Carrier's determination that the Claimant was not qualified. We therefore find that the Carrier was arbitrary when it determined that the Claimant was not qualified to bump the junior Machinist. From the record developed on the property, this Board has no clue why the Carrier considered the Claimant not qualified. For those reasons, the claim shall therefore be sustained, the Claimant shall be allowed to exercise his displacement rights (should he choose to do so) and the Claimant shall be made whole.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of May 2005.