

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13848
Docket No. 13719
05-2-03-2-55

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 disqualified Lincoln, Nebraska Machinist James Zak (hereinafter referred to as the "Claimant") and prevented him from securing a position (as allowed for in the exercising of his rights of seniority) on two separate occasions.

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 26, 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, the Claimant bumped junior Machinist R. Grossenbacher from a Wheel Lathe Operator position and occupied that position for two days until, on January 26, 2000, the Carrier advised the Claimant that he was disqualified from the Wheel Lathe Operator position due to the fact that he did not have a certificate for non-destructive testing. The Organization further states in this letter that the certificate is not a requirement of the bulletin for the Wheel Lathe Operator position and the Claimant was not given the opportunity to obtain the certificate. In this letter, the Organization also states that after the Claimant was disqualified from the Wheel Lathe Operator position, the Claimant bumped to a Maintenance Machinist position displacing junior employee M. Hempel. However, according to the Organization, the Carrier informed the Claimant on January 28, 2000 that this bump was also disallowed as he was not qualified for the position notwithstanding that Organization's assertion that "even though Claimant had fifteen (15) years experience at maintenance"

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 reiterated the facts and arguments from its February 21, 2000 letter.

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

* * *

"Machinist Zak was not allowed to displace Machinist Grossenbacher 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 Zak was not allowed to displace on a position that he was not qualified to fill.

* * *

As Machinist Zak 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:

"... On January 26, 2000, it was discovered that Claimant did not have a certificate for non-destructive testing which is required of a Wheel Lathe Operator. Claimant was notified on that date that his displacement was disallowed as he was not qualified to fill the position. He then attempted to displace Machinist Mike Hempel on a maintenance position that required crane inspection certification and the operation of a milling machine and a lathe. Again his displacement was disallowed due to the fact that he was not qualified to fill the position. Claimant then displaced on a Machinist position that he was qualified to fill."

The status of the record in this case is no different from that of the record discussed in Second Division Award 13847. While the Carrier has substantial

leeway in making determinations concerning qualifications of employees, when the Organization makes showings that the employee may be qualified, the Carrier cannot just take the position on the property that the employee is not "qualified" for the position and then add facts in its submission to this Board attempting to show a rational basis, justification or excuse for its actions. The lack of evidence developed on the property by the Carrier to rebut the Organization's showings leads this Board to conclude that the Carrier's determination that the Claimant was not qualified was arbitrary.

For reasons stated in Second Division Award 13847, this claim shall also be sustained and 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.