

Award No. 12117
Docket No. MW-11451

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The disqualification and demotion of Assistant B&B Foreman Hoy Whitson on November 21, 1958 was without just and sufficient cause and in violation of the effective Agreement.

(2) The Carrier now be required to restore Mr. Whitson to the position of Assistant B&B Foreman, with seniority rights as such unimpaired.

(3) Claimant Whitson be allowed the difference between what he earned and received as a B&B Laborer and what he should have earned and received as an Assistant B&B Foreman from November 21, 1958 until such time as he is restored to his position of Assistant B&B Foreman.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned to the position of Assistant B&B Foreman on B&B Gang No. 5, under the supervision of B&B Foreman R. E. Tilley, having worked in that capacity for a period of twenty-seven months.

Nonetheless, in a letter dated November 18, 1958 the claimant was advised that:

"CLINCHFIELD RAILROAD COMPANY

Erwin, Tenn November 18, 1958

Mr. Hoy Whitson, Asst. Foreman
B&B Gang No. 5

Dear Mr. Whitson:

You will recall that when position which you now occupy was advertised that you were the only applicant. At that time you were a laborer in B&B Gang No. 6.

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Carrier respectfully submits the claim is without merit, it should in all respects be denied, and the Board is requested to so find.

Carrier has included in this submission all relevant, argumentative facts and evidence with respect to this claim, all of which have heretofore been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was employed by Carrier as a B&B Laborer on September 3, 1952. On August 3, 1956, a position of Assistant Foreman on B&B Gang No. 5 was bulletined. Claimant was the only applicant and he was assigned to that position on August 20, 1956. On November 18, 1958, Claimant was notified that he was disqualified as Assistant Foreman as of the end of the work day of November 21, 1958, and he was returned to his former position as B&B Laborer without loss of seniority.

At the request of Claimant, a full investigation was conducted on December 5, 1958. Claimant and his representatives were present and they were given every opportunity to present evidence relevant to his competence and just treatment.

The record shows that at the time Claimant applied for the position as Assistant Foreman he had about four years of experience as a gang laborer. He had no experience in any of the semi-skilled or skilled jobs in the gang. He was the only applicant for the position. His supervisor, the Master Carpenter, asked him to withdraw his application because of his lack of experience and knowledge of the work.

It has been the practice on the property for the Assistant Foreman to take full charge of the gang and direct the work in the absence of the Foreman. Claimant relieved the regular Foreman on four occasions when the latter was absent. Each time a supervisor had to help out to direct the work. Claimant was unable alone to assume the responsibility. On two of the occasions serious accidents occurred which may have been avoided with better supervision.

Claimant was unable to properly read and interpret blue prints and in the 27 months on the job made no progress to improve this ability.

At the investigation, Claimant asked the Master Carpenter, W. C. Hillman the following question:

"Isn't it a fact, Mr. Hillman, that the laborers out there knew more about the jobs than I did?"

To which Mr. Hillman replied:

"That's right, they could visualize them better than you could, I observed that."

B&B Carpenter 1st Class, Jim Gage testified that: "If a man is qualified as Asst. Foreman, he should know the duties of a Foreman."

Claimant's Foreman, R. E. Tilley testified that "in two years it seems that he has not learned too much about the work."

On October 17, 1956 Claimant was given a written examination for Assistant B&B Foreman. The Examiner did not approve Claimant for such a position and wrote "ability and merit are not now sufficient."

The record is replete with evidence that Claimant was given every assistance to improve his ability and to qualify for the position. Perhaps the Carrier was remiss in its duty by keeping Claimant on the job for 27 months. But that is an error of judgment in favor of Claimant. It gave him more time to qualify than he was actually entitled to.

The fact that Claimant was disqualified after he had worked in that position for more than 30 days does not violate the agreement if the action of the Carrier was not arbitrary, willful or capricious.

Carrier has been eminently fair with Claimant. He was given every opportunity to qualify. There is no evidence that Carrier was arbitrary or capricious in disqualifying Claimant as Assistant Foreman.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.