

Award No. 12523
Docket No. SG-12030

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) The Carrier's action in disqualifying Mr. Charles Davis from a position of Signal Foreman on the Chicago Terminal on October 29, 1958, was arbitrary, capricious, and in violation of the current Signalmen's Agreement.

(b) The Carrier be required to reinstate Mr. Charles Davis as Signal Foreman, with rights unimpaired and compensated for time lost at the Foreman's rate while working in a lower classification. [Carrier's File: 135-321-56 Spl, Case No. 80 Sig.]

EMPLOYES' STATEMENT OF FACTS: A position of Signal Foreman on the Chicago Terminal Division was advertised by Bulletin No. 22, dated September 3, 1958. Mr. Charles Davis, the claimant in this case, with 20 years' experience in the Signal Department, was the senior applicant for the position and was assigned to the position commencing work on October 1, 1958.

The claimant worked the position until October 29, 1958, when he was disqualified from the position by Mr. Thomas Lindsey, Signal Supervisor, and forced to displace in a lower class. In view of the fact that the claimant had worked on the Foreman position beyond the 21-day qualifying period of Rule 504(a) and there had been no evidence presented by the Carrier to warrant the claimant being disqualified, **Local Chairman John J. D'Arcy, Jr.** filed a claim in behalf of Mr. Davis under date of November 2, 1958, with **Mr. J. H. Megee, Division Engineer**, as follows:

"I wish to enter a grievance in behalf of Disqualified Signal Foreman Charles Davis. He was disqualified by Mr. Thomas Lindsey, Signal Supervisor. Mr. Lindsey said he acted upon the recommendation of Special Signal Foreman John Bereza. Mr. Lindsey's appointment was a very recent one and is new to the Chicago Terminal.

Messrs. Lindsey and Bereza have seniority with the Carrier in each of the five work classifications under the Signalmen's Agreement. They were in a position to observe and make a determination of the fitness of Mr. Davis during the period he was working as a Foreman. Beyond any question of doubt Mr. Davis did not possess sufficient ability to satisfactorily perform the requirements of a Foreman's position, and his disqualification was fully warranted.

This Board has stated in many awards that once the Carrier has established the fact that an employe is not qualified for a position the burden is upon the Employes to overcome that decision. See Award 6178, Third Division, which states:

"... the Carrier has the right to decide whether the applicant is competent to fill the bulletined position and, unless the Employes can prove that the applicant was **competent** to perform the position involved or that the Carrier acted in a biased or prejudicial manner in evaluating the claimant's competency, the decision of the Carrier must be final. The Employes have failed in their proof of competency or prejudice, therefore the claim must be denied—Awards 4040, 5966, 6054." (Emphasis ours.)

Also, see supporting Awards 2031, 2491, 3273, 4040, 5966, 6054, 6143, 6829, 6848, and others.

The Board will note that in the Employes' appeal letter to Carrier's Manager of Personnel, Carrier's Exhibit No. 1, not one shred of evidence was presented by them to substantiate a finding that the Claimant possessed the necessary requisites for the position of Foreman. They advance many arguments why Mr. Davis should be reinstated but no evidence was presented that would justify their request. This is simply a case where an employe has failed to take advantage of the opportunities to prepare himself for advancement and claims a right to a position solely on the basis of his seniority. There is absolutely no merit to the request and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises in behalf of Charles Davis who was disqualified from a position of Signal Foreman on October 29, 1958. Claimant contends that such disqualification was arbitrary and capricious. However, he cites no evidence of arbitrariness except a claim that Carrier has disqualified Claimant without a hearing in violation of Rule 705.

Rule 705 reads as follows:

"RULE 705

Employes will not be demoted or reduced to a lower classification or rate of pay as a disciplinary measure. Demotions or reductions shall only be made where it is clearly established that the employe is not qualified to serve in the higher class after hearings have been held as provided for in this article."

In effect Claimant contends that he was demoted without a hearing and that this constitutes an arbitrary and capricious disqualification on the part of the Carrier.

Carrier contends that this is not a demotion, but rather is a disqualification pursuant to Rule 504(a), which reads as follows:

"RULE 504(a)

Except as provided in Rule 301, an employe accepting promotion to positions coming within the scope of this agreement and failing to qualify at the expiration of 21 work days, may exercise his seniority by displacing the junior employe in the seniority class from which he was promoted; however, an Assistant who completed his eight periods of 130 eight-hour days of service prior to the effective date of this agreement is promoted and fails to qualify at the expiration of 21 work days will forfeit his seniority in classes above that of Helper and be demoted to a Helper. An Assistant who completes his eight periods of 130 eight-hour days of service on and after the effective date of this agreement, who is promoted and fails to qualify at the expiration of 21 work days will forfeit all seniority and be considered as having resigned from the service."

The record reveals that the Carrier promoted the Claimant to the position involved and after he had actually worked at his new position 21 different days, he was disqualified. We hold that such action, in and of itself, was not a violation of Rule 705 and was not arbitrary and capricious. Claimant contends that he was not disqualified within the 21 days authorized as a qualification period by Rule 504(a) but that he occupied the position for 25 workdays. His contention is that although he only actually worked 5 days per week, since he is a monthly rated employe, he is assigned only one rest day per week and therefore all other 6 days per week are "workdays" within the meaning of Rule 504(a). We cannot agree with this interpretation. We hold that Rule 504(a) was intended to provide an employe 21 days "actually worked" in which to qualify for a promotion. At the end of 21 days actually worked, he may be disqualified by the Carrier pursuant to Rule 504(a) without such disqualification constituting a demotion within the meaning of Rule 705 so as to require a hearing.

Inasmuch as the Carrier did not violate Rule 504(a) as here interpreted, and Rule 705 being held inapplicable and there being no other evidence of arbitrariness cited by the Claimant, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.