

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23066
Docket Number **MW-22889**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad Company

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

(1) The disqualification of J. **Frasier**, Jr., as assistant foreman **at** the close of work **on** June 30, 1977 was **without** just and sufficient cause /System File P/R Frasier, Joe, **Jr./12-8(78-3)J2/**.

(2) Mr. J. **Frasier**, Jr. be allowed seniority as an assistant foreman as of May 2, 1977 and he be compensated for all loss of earnings suffered."

OPINION OF BOARD: The **Claimant** was disqualified as an Assistant Foreman on June 30, 1977 because of his asserted inability "to work the men", to "keep the machines assigned to you in the proper working **condition**", and to "plan your daily work ahead".

After a hearing was held on the matter, the Carrier notified the Employee **that** it reaffirmed its earlier decision that: he was not qualified to accept the responsibilities and duties.

The Organization disputes the Carrier's conclusion that the Employee was not qualified, and it presents certain evidence and testimony in an effort to **convince** us that there is nothing of record to sustain Carrier's decision.

To the contrary, the Claimant demonstrates that Rule 12 vests certain discretionary authority with **management**, and although Section 4 of **Rule** 12 provides that **employees** accepting promotion will be given a fair chance to demonstrate their ability, if they fail to qualify, the position may be declared vacant.

The Carrier reminds us that the Employee received the position "subject to his ability to qualify", and during the sixty (60) days afforded to him in which to qualify **he** failed to demonstrate the necessary ability.

We do not, in **any manner**, desire to issue an award which alters the **long** established **concept** that management has a right to make initial qualification determinations, and as long as those decisions are not arbitrary, capricious, **unreasonable, discriminatory**, etc., they should not be disturbed. At the same time, we are disturbed by this record because the evidence indicates to us that, although the **Employee may** not have been totally qualified on the day he was disqualified, he was **making** sincere efforts and was demonstrating that he could be a valuable asset in the position.

Our attention has been invited to Third Division Award No. 22620. There, the Board found that the record was inconclusive with respect to either party's position and, as a result, the Claimant should be "**...given** a reasonable opportunity to qualify. . . on the next job to which his seniority would entitle him, **and** we direct Carrier to do so". We would strongly suspect that Award No. 22620 has a very limited sphere of applicability. However, we are not disinclined to follow its principles in a dispute such as this. Accordingly, while we do not disturb the Company's basic contractual rights to disqualify in general **terms**, nonetheless in this particular case we find that the **Claimant** should be given a reasonable opportunity to qualify on the next position to which his seniority would entitle him, and we direct the Carrier to grant him that opportunity.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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 was not violated.

A W A R D

Claim disposed of as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.