

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24045
Docket Number SG-24273

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(Western Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Pacific Railroad Company:

On behalf of Mr. R. K. Ward, TCS Maintainer, Oakland, CA, who, by letter dated April 11, 1980, was disqualified for Signal Test Foreman position at Stockton, CA." (CM Case No. 12469-1980-BRS LC No. BRS-39 Engr. Dept.)

OPINION OF BOARD: The essential facts in this case are undisputed. Claimant was assigned to the Signal Test Foreman's position on March 17, 1980 and later disqualified on April 12, 1980. Carrier determined that Claimant lacked the requisite knowledge and experience needed to perform properly this position and disqualified him in accordance with Rule 58 of the controlling Agreement. Rule 58 reads as follows:

"In transferring employees to fill vacancies or new positions in their own class, seniority shall govern. An employee transferred in the exercise of seniority rights in his own class and failing to qualify within thirty (30) calendar days may exercise his seniority to displace the junior employee (if his junior) in the same seniority class; if no employee is his junior in that class he may displace the junior employee (if his junior) in the next lower seniority class in which his seniority will permit him to work."

In defense of his position, Claimant argues that he was not given the full thirty (30) calendar days provided by Rule 58 to demonstrate his fitness and ability to perform the duties of the Signal Test Foreman's position and requests that he be compensated the rate differential between the Signal Maintainer's position and the Test Foreman until such time as he is returned to the contested position.

Carrier argues that it fully complied with Rule 58, since it provided him a fair opportunity to qualify for the position, but strongly avers that he could not meet the position's normative performance standards. It asserts that Rule 58 does not require or imply that an employee must literally be accorded the full thirty (30) calendar days within which to qualify for a position, but provides that a senior employee must be afforded the first privilege to positions within his class and concomitant displacement rights if he is unable to qualify within thirty (30) calendar days. It contends that it correctly observed the spirit and intent of Rule 58 and disqualified Claimant on meritorious grounds.

In our review of this case, we agree with Carrier's position. Close reading of Rule 58 indicates quite clearly that Carrier is not constrained from disqualifying an employee before thirty (30) days. The key words in this provision, "failing to qualify within thirty (30) calendar days;" are pointedly unambiguous and do not require that an employee must remain in the assigned position for thirty (30) days. Carrier has the option to remove an employee from the assigned position within the thirty (30) calendar days period, if it finds that he could not qualify for the position, but it would be expected that the affected employee was accorded a reasonable and fair opportunity to qualify for the position. In this instance, Claimant was given twenty-six (26) days within which to qualify for the Signal Test Foreman's position and he failed to meet the necessary fitness and ability standards. We find no evidence that his disqualification was predicated upon arbitrary and capricious considerations and thus we must sustain Carrier's action. In Third Division Award No. 21328, which we find conceptually on point with this case, we stated in part that:

'This Board has held consistently over the years that the current possession of fitness and ability is an indispensable requisite which must be met before seniority rights become effective for a promotion.'

This decision is applicable herein. We must, however, note that while Carrier has the sole contractual discretion to disqualify an employee within the required thirty (30) calendar days qualifying period, it would certainly necessitate that an employee be given a fair opportunity to qualify for the position. This is an implicit requirement of Rule 58.

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

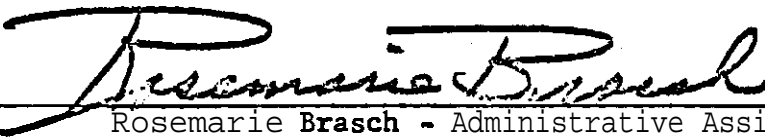
Claim denied.

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Page 3

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By  _____
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23th day of November 1982.