

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24626  
Docket Number MS-24824

Edward L. Suntrup, Referee

(David J. Schnalzer  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"**Claim** of Mr. David J. Schnalzer to be restored to position of welder and payment for all time lost at the welder position from December 20, 1979 until restored to welder position."

OPINION OF BOARD: This is a fitness and ability dispute in which Claimant, David J. Schnalzer, was adjudged lacking in ability to handle the position of Welder at Carrier's **Easton** Maintenance of Way Shop. The record before the Board shows that on or about December 1, 1979 the Claimant displaced a junior **employee** from Welder's position at the above noted Repair Shop with **tour** of duty from 7:00 AM to 3:00 PM, rest days Saturday and Sunday. After approximately three (3) **weeks** on the job the Claimant received notice, dated December 20, 1979, which stated the following:

"This is to advise you that effective December 21, 1979 you are hereby **disqualified as** a Welder in **Easton** Shop. Please exercise your seniority rights in accordance with current Agreement."

By letter dated February 5, 1980 the Claimant protested his **disqualification** and requested a hearing under Agreement Rule S(a). After said request was denied by the Carrier, the claim was appealed up to and including the highest Carrier officer designated to hear such appeals.

With respect to Carrier denial of hearing on property this Board rules that this was a correct determination by the Carrier since the Rule cited by Claimant addresses the issue of discipline and not job qualification. Further, the Board can find nothing in the record to suggest current Agreement contravention by the Carrier. The facts of the case herein at bar are straightforward. The Claimant bid on and assumed a **skilled** position. After a fair trial period the Carrier concluded that the Claimant was not qualified to fill this position. Nothing in the current Agreement requires the Carrier to keep employees in a position if it is determined that the employees are unqualified to do the work required. Such ruling by this Board is consistent with past Awards of the National Railroad Adjustment Board (Third Division Awards 21507; 22892; 23942). Absent, therefore, evidence that the actions of the **Carrier were arbitrary or capricious**, this Board denies the Claim.

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 **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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

