

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24787
Docket Number MW-24623

George V. Boyle, Referee

(Brotherhood of **Maintenance** of Way **Employees**

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier's disqualification of Apprentice Foreman Neal Jackson, Jr. as an Apprentice Foreman on April 13, 1981 was improper and without just, sufficient **or** reasonable cause (System File **MW-81-118/317-94-A**).

(2) The Carrier shall return the claimant to the position of Apprentice Foreman and shall **compensate** him at the Apprentice Foreman's rate, beginning April 13, 1981 until he is restored to the position of Apprentice **Foreman.** "

OPINION OF BOARD: The Claimant entered the Carrier's service January 29, 1973 and was promoted to Apprentice Foreman in September of 1980 in accordance with Article 24-Apprentice Foreman. Relevant sections of that Article are quoted as follows:

"Section 7. An apprentice foreman who, at any time within a **six-**month period from date he is placed on the apprentice **foreman** position, does not show satisfactory aptitude to learn and perform the work, and is relieved **from** position as apprentice foreman, shall have the right to return to the position from which taken without loss of seniority . . .

Section 9. Apprentice foreman will be required to work in the gangs with laborers, and will be **working** member of the gang to the extent possible and will also **perform** any supervisory duties assigned to them. They will be given every opportunity possible to qualify for positions of foreman. The foreman will teach these employees the safety rules and any other rules that are required of a foreman. They will be given a chance to surface and line track for the purpose of gaining knowledge of the work that is required of a foreman. Foreman will also teach the apprentice foremen to make out all reports."

On April 13, 1981, about seven (7) months after his promotion he was notified that he was disqualified, "due to your inability to carry out duties assigned to you as an Apprentice Foreman. You should arrange to exercise your seniority as a Track Laborer."

The **Employees**, on behalf of the Claimant, assert that:

1) The Carrier violated Article 24, Section 7 by disqualifying the Claimant **after** he had worked as an Apprentice Foreman for seven (7) months. They assert that under the provisions of this Article any disqualification must take place within six (6) months not seven (7).

2) The position of the Apprentice Foreman is defined as a "student", ***somebody** learning and training for a job but that the Claimant never received training, was never taught or instructed as provided in Section 9 of Article 24.

3) The Claimant was improperly evaluated by supervisors **unfamiliar** with his work.

4) The Carrier was obliged to take testimony **from** the Claimant's immediate supervisor, which was not done, and thus the hearing was improper.

The Board finds to the contrary on each allegation.

The testimony at the hearing elicited information that the Claimant was not qualified to be an Apprentice Foreman. His supervisor testified that he was **"uncooperative"**, **"did not obey orders"**, was **"quarrelsome at times"**, created "ill will" and 'bad feelings' among fellow **employees**, 'didn't supervise' and couldn't be reached for emergency work because he did not have a telephone installed. This is the prime consideration justifying the Claimant's disqualification. Article 24, Section 7 accords anyone **"relieved from position"** within six **(6)** months the right to reclaim his former position without loss of seniority. It does not mean that the **promoted employee** must be perpetuated in that position regardless of qualifications **or** performance if not disqualified within six **(6)** months.

The Claimant's training, instruction or lack thereof is not at issue. The preponderance of testimony establishes his lack of competence and ability to function as an Apprentice Foreman. But even within the framework of Article 24, Section 9 there is testimony that he had received partial instruction:

The **Employee** Representative, Mr. **Solares**, questions Mr. **Leger**, the District Manager-Lake Charles:

"Q. Have you personally taught Mr. Neal Jackson, Jr. any other rules that are required of an Apprentice Track Foreman?

A. I have quoted some rules to **Mr.** Jackson along with on the job training.*

Transcript p. 5) ...

"Q. **Have** you **personally** given Mr. Neal Jackson, Jr., an opportunity to surface and line track?

A. Yes I did . . .

Q. Mr. **Leger**, did you personally spend time among the track gang in which Mr. Neal Jackson, Jr. was assigned during his period as an Apprentice Track Foreman?

A. Yes, I did.

Q. Approximately how much time did **you** spend with Mr. Jackson during the **period** that he was an Apprentice Track Foreman?

A. I **would** say approximately **50%** . . . (Transcript p. 6).

Also Mr. **H. A. LeLeux**, Extra Gang Foreman was questioned by Mr. **Solares**:

"Q. Bow long a period of time did appr. Foreman Neal Jackson **work** under your immediate supervision?

A. Approximately 90 days.

Q. Within this period of time, 90 days, have you personally taught Mr. Neal Jackson, Jr. the safety rules of the Southern Pacific Tramp. Co. ?

A. Partially" (Transcript p. 10).

Both of these supervisors testified to the Claimant's lack of ability in the position to which he had been promoted. The fact that another supervisor did **not** also testify at **the** hearing does not negate their assessment. Further, no objections nor request for delay **were** entered at the hearing to allow the absent supervisor to testify at a later date and thus their defense is barred. **In** sum, the Board finds that the Claimant was properly **disqualified** from the position of Apprentice Foreman.

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

That the parties waived oral **heariang**;

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984