

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24894
Docket Number MW-24980

Edward L. Suntrup, Referee

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

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

(1) *The disqualification of Mr. N. Johnson as apprentice foreman on April 2, 1981 was improper and without just, sufficient or reasonable cause (System File P/R Johnson, N./12-12(81-1013) G).*

(2) *The Carrier shall return the claimant to the position of apprentice foreman on Force 8086; he shall be given a fair chance to demonstrate his ability to meet the requirements of that position; upon successful completion of the qualifying period, he shall be awarded a seniority date as apprentice foreman as of March 2, 1981; he shall be allowed the difference between what he would have been paid at the apprentice foreman's rate and what he was paid at the trackman's rate beginning April 2, 1981 until he is restored to the position of apprentice foreman on Force 8086 and he shall be allowed fourteen (14) hours of pay at the apprentice foreman's time and one-half rate for the time he was required to take written examinations on his rest days (March 13 and 20, 1981).*

OPINION OF BOARD: *On March 2, 1981 an Office Apprentice (Foreman) Job on Force 8086, Savannah Terminal, Savannah, Georgia was bulletined and bid on by the Claimant, N. Johnson who then held the position of Trackman. On that same day the Claimant was assigned to this position. In order to qualify for full status on this assignment, however, it was a Carrier and a FCC requirement for probationary employees to pass a number of written tests. These tests included a FRA Standards exam as well as written tests on motor cars, operating rules and radio rules. After the Claimant was given, and according to evaluatory judgments by the Carrier, failed these tests he was issued a letter of disqualification on April 2, 1981 by the Roadmaster of the Savannah Terminal. As a result of this the Organization requested a hearing into the handling of the disqualification in accordance with current Agreement Rule 39, Section 5. After the hearing was held on May 14, 1981 the Claimant received notice dated May 22, 1981 that his disqualification was upheld.*

The Claimant was disqualified under current Agreement Rule 12, Section 4 which reads as follows:

"Employees accepting promotion will be given a fair chance to demonstrate their ability to meet the requirements of the position; if failing to so qualify within sixty (60) calendar days the position will be declared vacant, and the employee may return to his former rank in accordance with Rule 13, Section 3."

Although the Board is fully cognizant of a Carrier's right to evaluate employees' abilities to meet the requirements of a position under a contractual provision such as Rule 12 cited above, a review of the record in the instant case casts doubt on whether the "fair chance" provision of Rule 12, Article 4 of the Agreement at bar was reasonably implemented. This Rule provides sixty (60) calendar days for qualification. Nowhere can the Board find sufficient evidence of record on the part of the Carrier to justify a disqualification decision being made.

It is true, according to the criteria used by the Carrier that the Claimant failed the written tests he took in an attempt to qualify for the position of Apprentice Foreman. Such failure must be understood, however, in its proper context. After reporting for the assignment on March 2, 1981 the Claimant was put on an extra force working the Savannah Yard for ten (10) hours per day, Monday through Thursday. On March 4, 1981 the Claimant was furnished copies of the Operating Rules Book and the FRA Standards and on the day after that he was advised of the test requirements for the position. On March 13, 1981 the Claimant was given tests on the motor car and radio rules. He then continued to work the extra force until March 20, 1981 at which time he was given the FRA Standards test. On March 30, 1981 the Claimant was required to fill out check roll and distribution sheets and to type a one-page letter. From March 2, 1981 until March 30, 1981 the Claimant had no office assignment nor was he informed, according to the record, prior to March 30, 1981 that he was to take the typing test that day.

Factors enumerated in the foregoing, therefore, include an unreasonably short lead time to take the tests and the consistent assignment of the Claimant during his probationary period to a work area which was totally foreign to an important part of the new job on which he bid and on which he was tested. Further, Roadmaster neglected to inform the Claimant that he was to take a typing test on the day he had been scheduled to do so. The only tools proffered by the Roadmaster to assist the Claimant to qualify were books.

It is the decision of the Board, therefore, that the Claimant be returned to the position of Apprentice Foreman with an additional chance to qualify for this position as so provided by the contractual provisions here at bar. All other claim(s) are 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 was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.