

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24934  
Docket Number CL-25033

Marty E. Zusman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9776) that:

1. The Carrier violated the terms of the effective Agreement, particularly Rule 16, when it disqualified Ms. Alice Graham from the position of chauffeur, SK-35, without benefit of hearing, before the expiration of sixty (60) working days.
2. Carrier's action in disqualifying Ms. Graham was arbitrary, capricious and without just cause.
3. The disqualification letter dated June 8, 1982, be expunged from the personal file of Ms. Graham and her record be cleared of any reference thereto.

OPINION OF BOARD: This is a fitness and ability dispute in which Claimant Alice Graham, with seniority date of December 4, 1969, was adjudged lacking in the ability to handle the position of Chauffeur, SK-35. Ms. Graham was first awarded that position, SK-35 on September 26, 1980 and worked the position for 45 days through December 30, 1980 until she exercised her seniority rights to another position. The instant dispute arose when on May 25, 1982, Claimant again exercised her seniority to return to position SK-35. On June 7, 1982 she again exercised her seniority rights and displaced to another position. On June 8, 1982, after a little more than a week on the job and the day after she had by her own volition, displaced to another position, Claimant received notice from Materials Manager Mr. W. H. Hoover which stated the following:

"On May 25, 1982 you exercised your rights and displaced on Position SK-35, Chauffeur. Since that date, you have received intensive instructions and training on the operation of Stores Trucks #922 and 923, the operation of fork lifts and the various other duties assigned to this position.

Based upon my personal observation and that of your supervisor and fellow employees, your performance on Position SK-35, Chauffeur, is not satisfactory in spite of the cooperation given by them. Accordingly, you are hereby disqualified from this position effective 4:30 p.m., Tuesday, June 8, 1982."

By letter of June 30, 1982 the Organization on behalf of the Claimant requested a hearing regarding her disqualification, which was held on July 16, 1982, and thereafter the decision of disqualification was affirmed by the Carrier, rejected by the Organization, and at impasse is now before the National Railroad Adjustment Board.

As a preliminary point, the Board underlines that all facts and/or lines of argument used by either party in their ex parte submissions which were not a part of the record as handled on property can not be considered properly before this Board. Part 1 of the claim of the Organization that Ms. Graham was disqualified "without benefit of hearing" was not argued on property and therefore will be considered herein as inadmissible. This position is a firmly established position of the National Railroad Adjustment Board, codified by Circular No. 1 and consistent with numerous Awards in this Division (Third Division Awards 20841, 21463, 22054 inter alia).

With respect to Carrier's action in disqualifying Ms. Graham, the record before this Board shows that Claimant exercised her seniority rights to Position SK-35 (Chauffeur) on May 25, 1982. On May 26, 1982 Claimant was sent for instructions on the use of Stores Vehicle 922 for what was called "customary training" on a vehicle she had not used before. The record also indicates that although the vehicle was difficult to manage having "a standard shift, but the two speed axle was ... something unique in the operation of that ..." vehicle, the Claimant was given training of ten miles of stop and go driving on wet pavement and on May 27, 1982 received two more miles of training, before she turned the vehicle over to a fellow employee. In addition to the above issues, the Board notes that the Carrier was advised of other events including the unsafe operation of a fork lift truck, improper connection of propane gas lines and reports of improper and unsafe loading practices.

The Organization and Claimant present considerable argumentation in the Board's mind over the salient issue at bar, Rule 16(c) which reads:

"Employees will be given full cooperation of department heads and others in their attempts to qualify."

Certainly this Board recognizes that the Carrier is not required to maintain employees who are unqualified to do the required work and if, after a fair trial it is so determined, then Carrier is in full right to remove said employee. One intent of Rule 16 is to maintain good employer-employee relationships by providing adequate, impartial and "full cooperation" in helping employees to qualify for positions. Claimant maintains that in the case of truck 922 she was being "harassed". Claimant admits to bumping a wall with a fork lift one and one-half (1 1/2) years earlier and even to a leak in a propane gas connection but states that they "never showed me how to change it over ... what I learned, I learned on my own", and denies other allegations. The supervisors documentation of poor performance was not available at the hearing, but "written down in my desk." Some occurrences are clearly presented with conflicting positions and by long established precedent this Board is not a trier of facts (Third Division Awards 16281, 21238, 21612 inter alia).

In the case at bar, the Board notes that in Claimant's prior 45 days, no charges were ever assessed against her. It also notes that if said work performance was dangerous to safety or flawed no warning to Claimant by Carrier was presented during such earlier service. The Board also notes that on May 26th and May 27th, for a period of twelve (12) miles, she did not receive "intensive instructions and training in the operation of Stores Trucks #922 ..." and given the substance of the case as developed on property the record is absent of the type of "full cooperation" required to help her qualify. It lastly notes that evidence clearly documents that she later drove said truck for an eighty (80) mile round trip.

The Board takes serious note that the Carrier is in the best position to "determine the fitness and ability of an employee for a particular position" (Third Division Award 20724), but further notes that the record before the Board does not substantiate Carrier's arguments that Claimant's disqualification to operate Carrier equipment occurred after a fair trial period and with the full cooperation of department heads. This Board therefore finds the actions of the Carrier to be unsubstantiated, inconsistent with the controlling agreement, and without just cause. As such, the Board holds that the disqualification letter dated June 8, 1982, be expunged from the Claimant's personal file and her record be cleared of any reference to it.

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

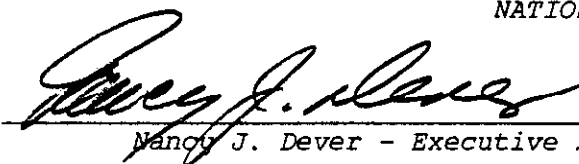
That the Agreement was violated.

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 30th day of July 1984.