

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25295

Docket Number MW-25102

George S. Roukis, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The disqualification of Mr. F. N. Fenelon as an assistant foreman on or about July 30, 1981 was improper and without just, sufficient or reasonable cause (System File C#28/D-2512-1).

(2) The Carrier shall return the claimant to the position of assistant foreman and shall reimburse him for the net wage loss* suffered from the date of disqualification until the date he is restored to the position of assistant foreman.

*Net wage loss is the difference between what he would have been paid at the machine operator's rate of pay and what he was paid at the laborer's rate of pay for the period he has been withheld from the position of machine operator.'

OPINION OF BOARD: Claimant was working as an Assistant Foreman in connection with a track rehabilitation project. Claimant was demoted to a laborer's position in July, 1981, as a result of failure to demonstrate qualifications as an Assistant Foreman. This is under challenge before the Board.

The file reveals a failure of Claimant to perform duties to the satisfaction of his superior. Numerous awards establish that Claimant has the burden of proof in disqualification cases to establish clearly, with sufficient probative evidence that Carrier was not justified in its action. The record lacks such required proof.

Moreover, it is not clear whether Claimant's behavior was due to misunderstanding of duties and their proper performance, lack of communication between Claimant and his Supervisor, or poor coordination of work. He had previously functioned in this position without complaint.

Because of the mitigating facts in the record, the Board strongly believes that Claimant should be provided another chance to demonstrate his qualification and, if found to be qualified, assigned work in accordance with the applicable rules and policies on the property. However, under the circumstances herein, we find no plausible basis for sustaining Part 2 of the claim. It is 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 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

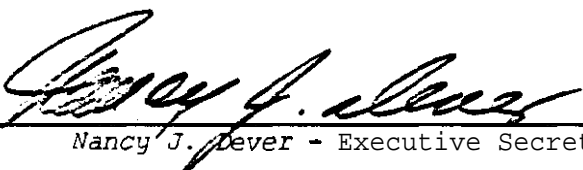
That the Agreement was violated.

A WARD

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 28th day of February 1985.