

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25936

Docket Number MW-25765

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Detroit, Toledo and Ironton Railroad Company

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

(1) The disciplinary demotion of Section Foreman R. B. Keefer and his disqualification as foreman for being absent from duty on August 17, 25, 26, September 1, 2, 3, 23, 27, 29 and October 1, 1982 was arbitrary, unwarranted and in violation of the Agreement (Carrier's File 8365-1-150).

(2) Mr. R. B. Keefer's seniority as track foreman shall be restored and unimpaired and he shall be compensated for all wage loss suffered beginning September 30, 1982 until he is returned to work as a section foreman with seniority as such unimpaired."

OPINION OF BOARD: Claimant R. B. Keefer assumed the Foreman's position on August 9, 1982. By letter of September 30, 1982 Claimant was notified that he had been "disqualified as Foreman of Section 10-Lima." The Carrier based its decision on Rule 5b which states in pertinent part:

"Rule 5 - Time In Which To Qualify

(b). . . A foreman who fails to qualify in a reasonable time, or who is disqualified at any time, may return to his former position unless such position is filled by an employee of greater seniority . . ."

The Organization verbally requested and was granted a Hearing without prejudice to the Rules. It maintained that Carrier disqualification of Claimant was a disciplinary action without benefit of Hearing. Following the Investigation held on November 30, 1982 the Organization appealed the Claim that Carrier action was in response to absenteeism and failure to protect assignment and therefore Claimant was demoted and reprimanded in violation of disciplinary Rules 34(a) and 34(e) which state in pertinent part:

"Rule 34 - Discipline

(a) Employees will not be suspended or dismissed from the service without a fair and impartial trial; neither will they be held off duty for minor offenses pending investigation or decision."

With respect to the Claim before this Board, the central issue is whether Carrier's action against Claimant was a disqualification subject to Rule 5(b) as the Carrier argues or a disciplinary action subject to Rules 34(a) and 34(e) as the Organization maintains. This Board has carefully and thoroughly reviewed Rule 5, and Rule 34, as well as the other Rules cited and issues raised on property. A review of the record as handled on property documents that in Claimant's position as Foreman, Carrier had Rule support to determine if Claimant met the position qualifications. Carrier was within its rights to determine the Claimant was not qualified to maintain the responsibilities of Foreman as his absenteeism without notice left his position unprotected. As Claimant was neither suspended or dismissed, he was not disciplined and Rule 34 was not controlling in the case at bar.

This Board finds the disqualification of Claimant has Rule support and the justification for Carrier action was affirmed by the testimony as evidenced in the transcript of the Investigation. Under Agreement Rules on this property, the Carrier's judgment of fitness with respect to Foreman allows "disqualification at any time . . ." Absent, therefore, evidence that the actions of Carrier were inconsistent or in violation of the Controlling Rules of Agreement, this Board must deny 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 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 26th day of February 1986.

