

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard System Railroad

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

(1) The Carrier's disqualification of Mr. T. D. Wright as a welder on Welding Force 5269 effective at close of work on October 7, 1983 was improper and unwarranted [System File 37-SCL-84-1/12-39(84-55) R].

(2) The Carrier shall return the claimant to the position of welder on Welding Force 5269 and shall compensate him for all wage loss suffered, all personal expenses incurred and all travel time from October 7, 1983 to the date he is restored to the position of welder on Welding Force 5269."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 30, 1983, the Claimant was awarded, subject to qualifying, the position of Welder at Tarboro, North Carolina. This promotion was subject to Rule 12 of the current Agreement which reads, in pertinent part, as follows:

"Rule 12 - Promotion

Section 1

A promotion is an advancement from a lower rank to a higher rank.

Section 2

Promotion shall be based on ability and seniority: seniority shall prevail if ability is

sufficient, of which the Management shall be the judge, subject to appeal as provided for in Rule 39. In promotion, the provisions of Rule 6, Section 2 shall apply.

Section 3

In the interest of development of efficiency and promotion qualifications, nothing in this Rule shall prevent the employees from bringing to the attention of the Management their views as to the ability and merit of any person seeking promotion.

Section 4

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) days the position will be declared vacant, and the employee may return to his former rank in accordance with Rule 13, Section 3.

Section 5

Employees declining promotion shall not lose their seniority, except to the employees promoted and only in the next higher rank."

Some 45 days after the Claimant was awarded the position the Welding Supervisor advised the Division Engineer that the Claimant was deficient in a number of areas and that the Supervisor could not "...qualify (the Claimant) as a welder until he (made) necessary improvements in all phases of welding...." The Carrier's supervision then opted to give the Claimant another qualifying period to improve his skills. Under date of September 19, 1983, the Welding Supervisor again evaluated the Claimant in a letter to the Division Engineer and concluded that before the Claimant could be qualified as a Welder he needed to make improvements in field welding, acetylene gas welding, and electric welding of frogs. On October 7, 1983, the Claimant was advised by the Division Engineer that effective at the close of that workday he was disqualified as a Welder on Work Gang 5269 at Tarboro. On October 14, 1983, the General Chairman of the Organization requested a formal Hearing on behalf of the Claimant to determine his qualifications as welder. The Hearing was held on November 7, 1983, and the Carrier subsequently upheld its supervision's earlier determination in this matter.

The record shows, and the Organization argues on appeal, that the Claimant held seniority on the Welder Roster since 1962, and in addition to

working as a Welder in the Carrier's Rail Welding Plant at Rocky Mount, North Carolina he had worked some eight years as a Welder Helper and had relieved other Welders in the welding plant and in the field. He had also worked for a month as a Welder prior to being assigned to the position at bar on May 30, 1983.

The Carrier apparently took all of this into account when it provided, which it was not obliged to do under the Agreement, the Claimant with a second sixty day period in which to attempt to qualify for the Welder's position. The Welding Supervisor is very specific when giving reasons why the Claimant should not be qualified after over 120 days on the job. The Supervisor found that the Claimant had problems properly lining and grinding when field welding, with fusing weld and base metal when acetylene gas welding, and with being precise when electric welding frogs. There is nothing in the record to show that the Claimant was not granted "...fair chance" protections which were his under Rule 12.

The Board can find nothing in the Agreement Rules which requires the Carrier to keep an employee in a position if supervision evaluates the employee as unqualified for it. Such conclusion is consistent with other rulings by the Board dealing with similar circumstances (See Third Division Awards 22892, 23942, 24626). Absent evidence that the actions of the Carrier were arbitrary or capricious, the Board must deny the Claim.

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 29th day of September 1988.