

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10227) that:

1. Carrier violated the Agreement Rules, particularly Rule 8 when it disqualified Helen Kukuchar from Position #856, AMO, without providing her the full thirty (30) calendar days training with the full cooperation of department heads and others in her efforts to qualify for the position, and
2. Carrier violated Rule 22 of the Agreement when it failed to provide Helen Kukuchar with a fair and impartial unjust treatment hearing which began on July 17, 1985 and which was completed on September 17, 1985, and
3. Carrier shall now be required to restore Helen Kukuchar to Position #856, AMO, and that she be paid for all time lost as a result of her disqualification from this position."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claimant was disqualified from Position 856, Auxiliary Machine Operator (AMO), on June 19, 1985, whereupon she requested an Unjust Treatment Hearing in accordance with Rule 22. The Hearing established that, although the Claimant had exercised her seniority to this position on June 3, 1985, she had been training on Position 855, AMO, since May 6, 1985. The Carrier contends, and the Organization does not refute, that these positions are identical.

While the hearing record supports the Carrier's conclusion that Claimant was not qualified for the position by the day she was removed from it, the Organization submits the Carrier must meet the burden of showing that she was "manifestly unqualified" because the action was taken only sixteen calendar days following the Claimant's assignment to Position 856. The governing Rule, Section 5 of the August 10, 1967, Agreement reads as follows:

"Employees assigned to a position in the computer room will be allowed thirty calendar days in which to qualify, and failing to do so, shall retain all seniority rights, may bid on bulletined positions, but may not displace any regularly assigned employees. This will not prohibit employees being removed prior to thirty calendar days when manifestly incompetent. Employees will be given full cooperation of supervisors in the computer room and others in their efforts to qualify."


Under this Rule, when the Carrier disqualifies an employee prior to thirty days, it is saying it is evident the employee is not capable of becoming qualified within the specified training period. The facts in this case, however, show that the "manifestly incompetent" provision is inapplicable here. Claimant had been training in this job function since May 6, 1985, albeit on two separate positions. There is no indication her training was any different on Position 856 than it was on Position 855, or that it began anew when she changed jobs. We must reach the conclusion she had thirty calendar days of training and still had not qualified. The fact she may have worked overtime when no other employees were available is not evidence she was qualified. Although the Carrier is not obligated to call an unqualified employee to work overtime, it may do so when the only other alternative is to call no one. While the Claimant may have had differences with her supervisors during the training period, there is no evidence she was not given their full cooperation in her efforts to qualify.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.