

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30950
Docket No. MW-31509
95-3-93-3-522

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly disqualified J. M. Rodriguez from the assistant pile driver engineer position at the close of work on April 15, 1992 (System File MW-92-113/MW 02-129 SPE).
- (2) As a consequence of the violation referred to in Part (1) above, the disqualification shall be immediately rescinded, all reference to the disqualification shall be removed from Mr. J. M. Rodriguez' record, he shall be afforded his proper seniority date as an assistant pile driver engineer, he shall be given proper training in the operation of the pile driver and he shall be compensated for all wage loss suffered."

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 employee 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 January 13, 1992, Claimant exercised his bumping rights under the agreement and displaced a junior employee as assistant pile driver engineer. On April 15, 1992, Carrier disqualified Claimant from that position. Claimant requested and received an unjust treatment conference in accordance with Rule 49 of the agreement, after which Carrier reaffirmed Claimant's disqualification.

The Organization contends that Claimant was treated unjustly because Carrier never trained Claimant on the pile driver. The Organization observes that Rule 15(C) specifies that the purpose of the position "is to work with Pile Driver Engineer and learn the operation so as to have qualified employees to fill vacancies as they may occur," and that Rule 15(D) characterizes the position as "primarily a training position." The Organization argues that Carrier had the burden to prove that Claimant received adequate training and that Carrier failed to carry that burden, particularly in light of a signed statement by Claimant that he did not receive proper training.

Carrier contends that it has the right to assess the qualifications of employees for positions and that the Organization has failed to prove that Carrier's exercise of that right was arbitrary, capricious or discriminatory. Carrier argues that it disqualified Claimant because, after three months in the position, he was unable to grasp the basic instructions for operating the pile driver. Carrier maintains that its position is supported by a signed statement from the B & B Supervisor.

The decisions of this Board make it clear that, in the absence of express language placing greater restrictions or duties on the Carrier, Carrier has a right to determine the qualifications of employees, subject only to providing the employee a fair opportunity to qualify. See, e.g., Third Division Award 24045. The Organization has the burden to prove that Carrier's decision to disqualify Claimant was arbitrary, capricious or discriminatory. See, e.g. Second Division Award 10526.

Our review of the record developed on the property leads us to conclude that the Organization failed to prove that Carrier's decision to disqualify Claimant was arbitrary, capricious or discriminatory. Although Claimant asserted in his statement that he did not receive adequate training, that assertion was refuted by the B & B Supervisor's statement that Claimant was "unable to get past the basic instructions" on operation of the pile driver, and that the Supervisor had discussed Claimant's performance with Claimant on two occasions.

There is no evidence that during these discussions Claimant raised any need for more intensive training than what was being provided him. Claimant's own statement corroborates Carrier's determination that Claimant could not comprehend the most basic instructions, as Claimant admitted that when asked to raise the boom, he grabbed the wrong lever.

Beyond Claimant's assertions of inadequate training, the only other evidence which might suggest that Claimant was not afforded a fair opportunity to qualify for the position was Claimant's statement that, in the unjust treatment conference, the pile driver operator stated that it was not his job to instruct Claimant on the operation of the machine. The B & B Supervisor, however, denied that such a statement was made. We do not resolve such conflicts in the evidence de novo. We are bound to defer to Carrier's resolution of the conflict if that resolution is reasonable. See, e.g., Second Division Award 10526. Accordingly, we conclude that the Organization failed to prove that Claimant's disqualification was arbitrary, capricious or discriminatory.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of June 1995.