

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33903
Docket No. MS-32966
00-3-96-3-344**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Dennis Cory Moorehead
(
(The Kansas City Southern Railway Company (former
(MidSouth/SouthRail Corporation)

STATEMENT OF CLAIM:

“This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within seventy-five (75) days covering an unadjusted dispute between myself (Dennis Cory Moorehead) and the (KSC-MS/SR), involving the following:

The Carrier violated the current Work Agreement including, but not limited to Rule 18(b) when it arbitrarily disqualified Claimant Moorehead improperly and failed to allow the Claimant's establishment of Track Foreman seniority as required in accordance with Rule 17.

Remedy Sought:

Establishment of Track Foreman seniority, with seniority date of Oct. 17, 1994.”

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 were given due notice of hearing thereon.

The Claimant was hired by the Carrier as a Laborer in April 1993 and bid for, and was awarded the position of Section Foreman on the Carrier's Section Gang 101 on October 17, 1994. The Claimant was disqualified on November 24, 1994 by Roadmaster Cox. A Hearing was held on January 19, 1995, although neither party submitted the record of that Hearing to the Board. This claim challenges the Carrier's disqualification determination.

The Claimant argues that the Carrier has the burden of proving that its discipline was proper, it cited the improper Rule to accord disqualification, and it failed to cooperate with the Claimant during his qualification period.

The Carrier contends that it has the right to disqualify an employee, that such disqualification is not discipline and may be accomplished without a Hearing, and that it acted in accordance with the 30 working-day period set forth in Rule 18.

A careful review of the record convinces the Board that it is the Claimant who bears the burden of proof in this case, because we have held on numerous occasions that disqualification from a position is not discipline and does not entitle an employee to a disciplinary Hearing. See Third Division Awards 29307, 24626, 21596, 20045. The Claimant failed to show that the Carrier acted improperly in disqualifying him from the Section Foreman position in issue within the 30 working-day period permitted by Rule 18. Under such circumstances, the claim must be denied.

AWARD

Claim denied.

ORDER

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 24th day of January, 2000.