

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33913  
Docket No. MW-32312  
00-3-95-3-145**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(The Burlington Northern and Santa Fe Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it removed Mr. M. Michaelis from the head welder position (No. 72400) at Beach, North Dakota on January 5, 1993 (System File B-M-301-H/MWB 93-07-27C).**
- (2) The claim as presented by Vice General Chairman A.R. Hohbein on January 11, 1993 to Yellowstone Division Superintendent G. Allen shall be allowed as presented because said claim was not disallowed by Superintendent Allen in accordance with Rule 42(A).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Head Welder M. Michaelis shall:**

**‘. . . be made whole for any and all losses incurred beginning January 5, 1993 and continuing until the violation is corrected by his return to his Head Welder’s position, or other position he could have acquired through exercise of seniority, and by expunging any mention of this discipline from his personal record. We request that Claimant receive pay for eight hours per work day, beginning January 5, that he receive pay equal to any and all overtime worked by Head Welder or lower Welding classification he could obtain beginning January 5,**

and continuing until his restoration to his position in Beach or other welding subdepartment position he could acquire through exercise of his seniority. We request that he receive accreditation for any and all fringe benefits, including vacation qualification, insurance and Railroad Retirement Board accreditation."

**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.

At all material times herein, and until January 5, 1993 the Claimant was assigned as a Head Welder in Beach, North Dakota, a position which, pursuant to bulletin, required a proper driver's license. When the Carrier discovered that Claimant's driver's license had been revoked, by the state, he was disqualified from the position on January 5, 1993.

The Organization first contends that the Board need not visit the merits of the claim because the claim must be allowed under Rule 42. More specifically, the Organization points out that under Rule 42 the Carrier must notify the Organization of any denial of a claim within 60 days of its filing and that if it fails to do so "... the claim ... shall be allowed as presented." The Carrier on the other hand points out that Rule 42 also requires that the claim be presented to "... the officer authorized to receive same, ..." and that prior Awards have held that claims presented to the wrong officer must be denied. The record shows that the initial claim, filed on January 11, 1993 was indeed sent to the wrong Carrier official. Moreover, the record shows that when the

Organization again wrote to that individual in April, appraising him of the Organization's view that the Carrier had defaulted under Rule 42, the authorized official responded within 60 days. Thus, any initial delay in processing can indeed be attributable to the Organization's error. Moreover, once the matter found its way to the authorized Carrier official all time constraints were met. We believe therefore that on the basis of this error by both of the parties the matter is best resolved by looking to the merits.

On the merits, the Organization contends that the Claimant's removal from the position in question was not supported by just cause and was otherwise arbitrary and improper. The Carrier replies that just cause is not the standard to be applied because the removal turned only on the fact that the Claimant did not have the proper qualifications for the position in question. In addition, it asserts that it properly exercised its discretion in this regard.

We agree with the Carrier that absent any language to the contrary, the just cause standard applies only to discipline and that the removal of the Claimant from the position in question had nothing to do with his performance or behavior which would be the basis for which one is ordinarily disciplined. Rather, the removal turned on whether or not the Claimant possessed the necessary and reasonable qualifications for the position. On this point the Carrier is correct that its discretion is broad and we do not believe that requiring the Claimant to possess a valid driver's license in order to drive a pick-up truck as the Head Welder was either arbitrary, capricious or unreasonable.

**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.**