

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35408
Docket No. MW-35382
01-3-99-3-255**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s disqualification of Mr. B.L. Oppegaard from Rank B Traveling Equipment Maintainer Job No. 36264 on June 3, 1997 and decision to uphold such disqualification following an unjust treatment hearing held on June 24, 1997 was without just and sufficient cause and in violation of the Agreement (System File T-D-1386-H/MWB 97-11-07AF BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B.L. Oppegaard shall now be accorded his May 7, 1997 Roadway Equipment Repair Subdepartment Rank B, C and D seniority dates; be placed on Rank B Job No. 36264; and be made whole for the differences in rates of pay between that of Rank B Maintainer and that which he received as a result of the unjust disqualification, including any overtime worked by Rank B Job No. 36264 from the date of his unjust disqualification until he is placed on the job.”**

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.

This is a disqualification dispute involving Claimant B. L. Oppegard, a regularly assigned Machine Operator for 21 years. On April 23, 1997, the Carrier bulletined a Traveling Mechanic position at Grand Forks, North Dakota. The position required knowledge of electric, hydraulic and pneumatic diagrams, schematics on work equipment machines, a working knowledge of gas and diesel engines with sufficient skills to perform repairs, and proficiency in electrical and gas welding. The Claimant was awarded the position on May 7, and reported on May 19, 1997.

By letter dated June 3, 1997, the Claimant was disqualified based on the Carrier's determination that he was unable to satisfy the requirements of the position. The Claimant requested and was granted an Unjust Treatment Hearing in accordance with Rule 62 of the Agreement. The Hearing took place on June 24, 1997, after which the Claimant was notified that the Carrier upheld his disqualification on the position.

The Organization contends that the facts adduced at the Unjust Treatment Hearing clearly demonstrated that the Claimant was not given sufficient or reasonable opportunity to qualify for the Traveling Mechanic position, nor was he given proper training to become qualified. Moreover, the Organization asserts that the Claimant was denied a fair and impartial Hearing because the Hearing Officer prejudged the decision to reject the Claimant's unjust treatment claim.

The Carrier, on the other hand, argues that the Unjust Treatment Hearing confirmed that the Claimant lacked the fundamental skills required of the Traveling Mechanic position. In the Carrier's view, the Organization failed to meet its burden of proving that the Claimant was disqualified in violation of the Agreement. Additionally, the Carrier maintains that the record plainly shows that the Claimant was afforded a fair Hearing and that no evidence of bias or prejudgment was adduced on the record.

The Board reviewed the transcript of the Unjust Treatment Hearing and the record of correspondence between the parties. We find at the outset that the Organization's due process arguments are unpersuasive. Although the Organization objected to some of the particular phrasing used by the conducting officer during the course of the Hearing, there is no basis for a finding that the officer prejudged the outcome of the Hearing or afforded the Claimant less than a fair and impartial opportunity to air his complaint. Furthermore, the Board sees no procedural infirmities during the handling of the claim on the property.

Turning to the merits, Rule 23 provides in relevant part:

"Employees awarded positions.. . in a class in which not yet qualified, will not be disqualified for lack of ability after . . . thirty (30) calendar days thereon. Employees will be given a reasonable opportunity.. . in order to qualify for such work.. . ."

The Board has held that under Rule 23, the Carrier is not obligated to provide anything other than a reasonable opportunity to qualify for an awarded position. The 30 day time period referred to applies in those cases in which an employee has been in the position in question for more than 30 days without first qualifying. See, Third Division Award 33050. The Claimant was not in the position for more than 30 days, so the only question is whether he was given a reasonable opportunity to qualify.

Clearly, what is reasonable depends on the facts and circumstances of each case. However, one must always bear in mind that the Carrier has the right and the prerogative to make determinations concerning an employee's qualifications for a particular position. The Board will not disturb the Carrier's decision absent evidence that it was arbitrary or erroneous. It is the Organization's burden to establish that the Carrier's determination was improper. See, e.g., Fourth Division Award 4093, Public Law Board No. 4381, Case 4, Third Division Award 30093, the last two Awards involving the same parties.

Applying these principles to the case at hand, it is the judgment of the Board that the Organization has not sustained its burden of proving that the Claimant was improperly disqualified. On the contrary, the record in this case supports the disqualification. The Claimant's Supervisor testified in considerable detail concerning the Claimant's shortcomings when it came to reading schematics and demonstrating a

working understanding of engines and hydraulics. His conclusion that the Claimant was not qualified for the Traveling Mechanic position was credibly based both on the Claimant's job performance and his responses to a series of questions developed precisely to test the skills and knowledge of employees seeking such a position. Equally important, the Claimant forthrightly admitted that he had difficulty understanding schematics, one of the core job requirements for a Traveling Mechanic.

The Organization urged that the Claimant should have been given more time to learn the job or afforded more training. But unlike the precedent Awards cited by the Organization, the key point here is that the Claimant was unable to perform or was unfamiliar with a number of the key aspects of the job. Although he operated many different kinds of equipment and participated in everyday maintenance while assigned as a Machine Operator, the required knowledge for a Mechanic is substantially different. Rule 23 is not an apprenticeship term for teaching the basics. It is a trial opportunity, and the candidate must possess the fundamental skills at the time the position is awarded. Because the Claimant was unable to demonstrate that he possessed those skills, he was, by definition, unqualified for the position.

In light of the foregoing, we find that the Carrier did not violate the provisions of Rule 23 when it disqualified the Claimant from the Traveling Mechanic's position on June 3, 1997. Accordingly, this 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 26th day of April, 2001.