

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35808
Docket No. MW-32872
01-3-96-3-212

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier disqualified employe W. A. Reckley from a ballast regulator position on SPG Force 6XT6 on Thursday, January 12, 1995 [System File SPG-D-9344/12(95-484) CSX].

2. As a consequence of the violation referred to in Part (1) above:

‘ . . . we are requesting that the disqualification be removed from Mr. Reckley and that he be placed back on the ballast regulator on SPG force 6XT6. Also that his record be cleared of this disqualification and that he be made whole for any lost wages that this position has made, since he was disqualified.’”

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 disqualified from his position as a Ballast Regulator Operator. An Unjust Treatment Hearing was held without a change in the outcome.

The record shows that the Claimant was disqualified after it was brought to the attention of the Carrier on January 11, 1995 that there was an approximate six-mile section of track with poorly dressed ballast that was not spread to standard by the Claimant; Track Inspectors, the Roadmaster and the Division Engineer's office were critical of the work performed by the Claimant's gang; the Claimant had sufficient training for the six-day period he had worked as an Operator. As evidenced by the poorly spread ballast, the Claimant did not perform adequately. The Claimant's replacement had no problems correctly spreading the ballast.

Qualification, fitness and ability to perform a job are determinations to be made by the Carrier, subject only to limited review by the Board as to whether the Carrier was arbitrary in its determination. Based on the developed record, we cannot find that the Carrier was arbitrary in its determination to disqualify the Claimant. Given the problems exhibited by the Claimant in the performance of his job, a rational basis existed for the Carrier's determination to disqualify the Claimant.

The Organization's arguments that the Claimant was improperly disqualified go to whether the decision made by the Carrier was a correct one. At best, the Organization's arguments make the Carrier's decision a debatable one. But, showing that a determination was debatable, even wrong, does not equate with a demonstration that the decision was arbitrary. A rational basis exists for the Carrier's determination. That determination was therefore not arbitrary. In light of the limited review standard, that is as far as this inquiry can go.

The Organization's procedural arguments have been considered and do not change the result.

Based on the above, the claim is denied.

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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 14th day of November, 2001.