

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36199  
Docket No. MW-35806  
02-3-99-3-798**

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employees**  
( **Consolidated Rail Corporation (Conrail)**)

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier improperly disqualified Mr. B. Lesperance as a bridge operator headquartered at Valleyfield, Quebec, Canada on May 5, 1998 (System Docket MW-5261).**
- (2) The Agreement was further violated when the Carrier failed and refused to assign Mr. B. Lesperance to a bridge operator position to which he made application under Bulletin 98-05 effective June 3, 1998 and continuing (System Docket MW-5340).**
- (3) As a consequence of the aforesaid violation, the disqualification referred to in Part (1) above, the disqualification shall be rescinded, the Claimant shall be compensated for eight (8) hours' pay at his bridge operator's rate of pay for each date beginning May 6, 1998 and continuing as well as credit towards vacation and all other benefits he is entitled until such time as his disqualification is rescinded.**
- (4) As a consequence of the violation referred to in Part (2) above, the Claimant shall be assigned to the bridge operator's position on Bulletin 98-05 and be compensated eight (8) hours' pay at his bridge operator's rate of pay for each date beginning June 3, 1998 as well as credit towards vacation and all other benefits he is entitled until the violation ceases.”**

**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.

On March 31, 1998 the Carrier posted Bulletin Number 98-01 listing four Bridge Operator positions headquartered at Valleyfield Bridge, Valleyfield, Quebec, Canada. Claimant B. Lesperance was awarded one of those positions, and was assigned to same effective April 8, 1998.

By letters dated April 7 and 15, 1998 the Claimant was advised of mandatory safety meetings, set for various dates and locations across the Division, and instructed to make arrangements to attend one of the meetings. The Claimant was further advised that failure to attend one of the meetings could result in disqualification from the position.

However, due to a prior arrest and weapons charge in Canada, the Claimant was prohibited from crossing the international border into the United States. As a result, on May 4, 1998, Track Engineer J. Tolin notified the Claimant, via telephone, that he was not qualified to operate the bridge at Valleyfield and confirmed same in a letter, which stated:

**"Your disqualification as Bridge Operator is due to your failure to attend a mandatory safety training seminar. You were previously notified via certified mail of the scheduled B&B safety training seminars across the Albany Division. You were instructed to attend the meeting of your choosing in order to remain qualified as a Bridge Operator. As of the date of this letter and our telephone conversation, you have not complied with the required safety training. You may exercise your rights as per your BMW Agreement if you can comply with the necessary safety and testing requirements of that position."**

Of note, and pertinent to this dispute, on May 5, 1998 the Carrier posted B&B Bridge Operator Bulletin Number 98-03 which was awarded to R. Galipeau.

On May 7, 1998, the General Chairman submitted information which established that the Claimant could not attend any of the Carrier's scheduled safety meetings because he had been refused entry into the United States. Thereafter, on May 11, 1998, the Organization submitted its claim asserting that the Carrier had violated Rules 27, section 1(a) and Rule 3, section 2 of the Agreement. Specifically, the General Chairman

noted that the Claimant had worked the Bridge Operator position since July 1996 and was "fully qualified" to work same, and therefore, should not have been disqualified.

The Carrier denied the claim, maintaining that neither Rule cited by the Organization was applicable. The Carrier further maintained that "all" of the personnel in the M of W and B&B Departments were required to attend the safety training seminar prior to being returned to service, and that "all" of the Canadian employees attended the seminars in the United States, and had been compensated accordingly.

Thereafter, on May 26, 1998, the Carrier posted B&B Bridge Operator Bulletin Number 98-05 again advertising the position as the result of Galipeau's disqualification. The Claimant submitted application on Bulletin 98-05 along with a request to "demonstrate his ability and qualifications" in lieu of attending a safety meeting. The Carrier's refusal of the Claimant's request resulted in a second claim dated June 15, 1998, in which the General Chairman asserted that, in addition to Rule 27, section 1(a) and Rule 3, section 2, the Carrier had violated Rule 22 in its handling of the Claimant's "situation."

The Organization maintains that notwithstanding the Claimant's inability to attend the two-day Engineering Training, the Claimant is qualified to operate the Valleyfield drawbridge, and that the Carrier cannot prove, by documentation, that he is not so qualified. Moreover, the Organization asserts that following training held by the Carrier the previous year in Canada, the Claimant was deemed qualified. Finally, during the Manager's claims conference, the Organization stated that the Claimant's job bulletin for Drawbridge Operator did not specify that attendance at the Engineering Training was a requirement of the position, and that the Claimant had no contractual obligation to attend the Engineering Training.

With respect to Rule 27, the Claimant was not disciplined as a result of his failure to attend the Engineering Training. The Claimant was, however, properly disqualified from the Drawbridge Operator position because he did not attend one of the mandatory training sessions. In that connection, and with respect to Rule 3, section 2 of the Agreement, at the time the Claimant was required to begin operating the bridge, as a result of his failure to attend the mandatory two-day training, the Claimant could not demonstrate that he was qualified to work the Drawbridge Operator's position on the Albany Division.

Further, the Carrier is not contractually obligated to conduct training in Canada simply because it has done so on prior occasions. Nor is it incumbent upon the Carrier to qualify the Claimant simply because he was deemed qualified the prior year.

Finally, with respect to the Organization's contention that the Claimant had "no contractual obligation" to attend the Engineering Training, according to the Carrier's

undisputed statements, mandatory participation at the spring safety seminars was instituted "years ago with the concurrence of the Organization."

In sum, the Carrier's decision to disqualify the Claimant on May 4, 1998 because of his failure to attend the 1998 Engineering Training and thereby become safety qualified for the position of Drawbridge Operator was proper. Therefore, this claim is 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 September 2002.**