

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36564
Docket No. MW-34443
03-3-98-3-63**

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: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier assigned Mr. B. E. Carter to a B&B foreman position at River Rouge effective August 5, 1996 and improperly disqualified him from said position by letter dated August 6, 1996 without permitting him a reasonable opportunity to qualify or to demonstrate his ability and qualification to perform the duties assigned to said position (System Docket MW-4537).**
- 2. As a consequence of the violation referred to in Part (1) above, Mr. B. E. Carter shall be given ample opportunity to qualify for the B&B foreman position, a B&B foreman seniority date of August 5, 1996 and he shall be compensated for all wage loss suffered with proper credits for benefits.”**

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 held seniority in the Track Subdepartment dating from December 1976 and held seniority on the Detroit District, Dearborn Division dating from September 18, 1989.

On July 30, 1996, the Claimant was awarded a B&B Foreman position at River Rouge effective August 5, 1996 pending qualification. On August 5, 1996, the Claimant reported to work two and one-half hours late as a result of a flat tire. The Claimant was given a different location to report on August 6, 1996. On that date, the Claimant was again late after he became lost. On August 6, 1996, the Claimant was disqualified from the Foreman's position. This claim followed.

Rule 3, Section 2 - Qualifications for positions provides:

"In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

The determination of an employee's qualifications rests with the Carrier, subject to that determination not being arbitrary or capricious. The Claimant was disqualified from a supervisory position because he did not demonstrate that he could report to work on time. Given the short period of time that transpired, perhaps the Carrier's decision that the Claimant did not demonstrate his qualifications was debatable. However, because the position was a supervisory one, we cannot say that the Carrier's decision to disqualify an employee from a supervisory position because the employee could not report to work on time on two consecutive days was arbitrary.

We also note that the Claimant was subsequently dismissed for failing to report to work on days in August 1997, which dismissal was upheld in Public Law Board No. 3514, Award 642. That Award moots any requested relief in this case for the Claimant after his dismissal.

The claim shall therefore be dismissed.

AWARD

Claim dismissed.

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 16th day of June 2003.