

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36799  
Docket No. CL-36608  
03-3-01-3-125

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(Union Pacific Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood (GL-12710)  
that:

1. Carrier violated the current TCU/SP (UP) Clerks' Agreement, particularly Rules 26, 27, 30, 33, and 36 as well as others, and in addition it violated the provisions contained within the TOPS portion of the Clerks' Agreement (Collective Bargaining Agreement-CBA) when on January 13, 2000, it illegally disqualified Clerk P. Olson from the Guaranteed Extra Board (GEB) position, without any justification, at the Roseville Locomotive Facility, forcing him to make displacement to another position.
2. Carrier further violated the current Clerks' Agreement when as the result of its illegal disqualification of Clerk Olson, it adversely affected other Clerks as the result of Mr. Olson's subsequent displacement and the resulting chain of displacements forcing not only Claimant but other Clerks to obtain less desirable positions.
3. Carrier shall now be required to immediately restore Claimant Olson to his GEB position at the Roseville Locomotive Facility and in addition compensate Claimant(s) above eight (8) hours additional compensation at the overtime rate of GEB Clerk for

each date Claimant has been illegally removed from the aforementioned GEB position.

4. Carrier shall additionally be required to restore each clerk affected by Claimant's displacement (beginning with Clerk B. Perry and all subsequently affected Clerks) from their respective positions and in addition compensate each such Clerk for eight (8) hours additional compensation at the overtime rates of their respective positions until such time as they are returned to the positions they held prior to being affected by Claimant's displacement.
5. Carrier shall further be required to remove all references to the disqualification from Claimant's record.
6. Carrier shall also be required to arrange a joint conference to review payroll records of all concerned to determine the proper amounts to be paid to all affected Clerks since we are claiming overtime of eight (8) hours each date, beginning January 13, 2000, and continuing each date thereafter until the violation of Claimant's rights cease and corrective measures are taken."

**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 issue raised in this claim involves the propriety of the Claimant's disqualification from the Guaranteed Extra Board (GEB) at the Carrier's Roseville Locomotive Facility in January 2000. The Claimant began his employment with the Carrier on December 4, 1967, and his record is devoid of any challenge to his ability to handle the various positions he has held over the years. He exercised his seniority to displace onto the GEB effective July 1, 1999, a position which relieved four specific Mechanical Department jobs, none of which he had previously performed. Each such job required a working knowledge and proficiency in several computer applications and other programs dealing with the scheduling, servicing, recording, and reporting of locomotive maintenance and repair activities. The junior employee displaced remained in the department performing special projects.

Local management normally provides ten days of training for the GEB positions at Roseville, and the record establishes that seven out of nine applicants qualified for such positions based upon such level of training, while two were disqualified. As a result of a protest lodged by the Claimant, the Carrier agreed to provide him 20 days of training, and a letter was signed to that effect. The record reveals that between July 1, 1999 and January 17, 2000 the Claimant received 36 days of training on office positions, nine days of training with a Quality Supervisor in the shop office, and four days of independent computer classes paid for by the Carrier, for a total of 49 days of actual training. Most of the Claimant's working assignments during this period were to relieve one of the four positions, B630, although he was assigned for a short period on B635. According to a statement submitted by his Manager, the Claimant failed to complete important payroll functions or generate certain reports which were part of the B635 job, despite extensive prior training, and did not show reasonable capabilities at a minimum level for the other two positions within the office (B637 and B665) for which he received training on some of the tasks, but agreed he could not cover an upcoming vacancy. Supervisor Thomson's statement notes that while the Claimant was assigned to train with the Quality Supervisor, he was shown tasks involving locomotive maintenance packets, data entries and retrieving information from computer systems which form part of the B637 and B665 positions. The Claimant asserts that he was never informed of any issues with the performance of the positions for which he was trained, but did not receive training on positions B637 or B665.

In a meeting on January 12, 2000, the Claimant was informed that due to budgetary constraints, he could not receive additional training. He was asked if he felt that he was capable of covering all four of the vacancies in the office, and, according to his Manager and Supervisor, he admitted that he was not. The Claimant was provided time to exercise his options after he was disqualified from the GEB position effective January 17, 2000.

The Organization contends that the Claimant's disqualification was unjustified, because the Carrier failed to meet its requirement to give the Claimant reasonable training on all of the positions covered under the GEB. The Organization also asserts that the Carrier cannot disqualify an employee from the GEB, which is the position usually used to train new employees, and a position of last resort for senior employees such as the Claimant. It argues that even if the Claimant could not fill each of the vacancies, it would only be appropriate for him to miss the call on the list for a job he could not perform, not to be disqualified from the GEB position itself. The Organization notes that the Claimant was qualified on the highest paid positions, not the lower ones for which he was not trained, and has shown through his years of experience that he is able to qualify for any job with appropriate training, citing Third Division Award 22108. The Organization avers that the Claimant was only disqualified due to budgetary constraints and the Carrier's need to rid one Clerk from its department, but its desire to keep the more junior employee originally displaced by the Claimant. The Organization objects to the Carrier's attempt to negotiate a training agreement directly with the Claimant, relying upon Third Division Award 21048, and requests a make whole remedy for the Claimant and all employees adversely affected by the result of his disqualification.

The Carrier argues that the evidence firmly establishes that the Claimant received more than a reasonable amount of training for all positions covered by the GEB, noting that he got more than four times the amount of training normally given for such position in this office, citing Public Law Board No. 3755, Award 121, and that two other employees were previously disqualified from the GEB position with far less training. The Carrier asserts that despite all of this training, the Claimant was unable to demonstrate proficiency in all of the jobs in the office he was supposed to cover, and admitted his inability to do so in a meeting prior to his disqualification. The Carrier contends that it has the inherent right to determine

qualifications, relying upon Third Division Awards 32229, 32880, 35742, 36278; Public Law Board No. 5379, Award 20. The Carrier argues that the Organization failed to demonstrate that the Claimant was fully qualified and that it acted improperly, citing Third Division Award 29105. Further, the Carrier avers that the proper forum for a challenge of this sort would have been an Unjust Treatment Hearing under Rule 50, which was not utilized by the Claimant. The Carrier also argues that the Organization's claim for compensation is grossly excessive and unwarranted, and fails to detail how anyone else was aggrieved, citing Third Division Award 17701.

Upon careful review of the record, the Board finds that the Organization failed to sustain its burden of proving that the Carrier's disqualification of the Claimant from the GEB position was violative of the Agreement. It is well settled that the Carrier has the inherent right to make decisions regarding an employee's qualifications for a particular position, and that such determination is subject to challenge by a showing from the Organization that the Claimant is, in fact, qualified, or that the Carrier's decision was arbitrary or capricious. (See Third Division Awards 35741 and 36278.) In this case, there really is no dispute that the Claimant was not qualified to perform the functions of Positions B637 and B665. The only dispute of fact is whether the Carrier provided the Claimant with reasonable training in his GEB position, with the Claimant asserting that he was not trained on Positions B637 and B665 and the Carrier's Manager and Supervisor stating that he did receive specific training opportunities with respect to some of the functions included within these jobs. At best, the Organization has shown an irreconcilable dispute of fact with respect to this specific aspect of training, a showing which does not meet the requisite burden. ( See Third Division Award 29105.) The evidence establishes that the Claimant received more than four times the normal amount of training deemed appropriate by the Carrier for this position. That being the case, its decision to disqualify the Claimant from the GEB position after his admission that he could not fill all of the vacancies after receiving such training opportunities can hardly be said to be arbitrary or capricious. The Organization offered no proof to support its allegation that the Carrier had an underlying impermissible motivation in deciding to disqualify the Claimant.

Accordingly, the claim must be 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 29th day of December 2003.**