

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39962
Docket No. MW-39030
09-3-NRAB-00003-050303
(05-3-303)

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The disqualification of System Gang 8531 Thermite Welder J. Paredes on March 30, 2004 was unjust, without just and sufficient cause and in violation of the Agreement (Carrier’s File 1399855).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Paredes shall now have his thermite welder seniority restored and he shall be compensated for all straight time and overtime wage loss beginning March 30, 2004 and continuing.”

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, who entered the Carrier's service in 1996, held seniority within the System Thermite Track Welder classification at the time of the relevant events. On March 29, 2004, the Claimant exercised his contractual seniority rights and displaced a junior employee as a Thermite Welder on System Gang 8531, pursuant to Rule 21(e) which provides, in relevant part, that: "When forces are reduced or positions are abolished, seniority will govern, and employees affected thereby may displace junior employees in any seniority class in which seniority and qualifications are held." (Emphasis added) The Carrier disqualified him from the position at the close of his shift on March 30, 2004.

The instant claim asserts that the Carrier disqualified the Claimant without just cause, and that it offered no documented proof to substantiate his disqualification. Following the Claimant's disqualification, the Organization requested, and the Carrier conducted, an unjust treatment conference pursuant to Rule 48(n). In its denial of the instant claim, the Carrier notes that during that conference the reasons for the disqualification were outlined, including that the Claimant (1) did not know proper lining techniques (2) did not install the mold clamps correctly (3) did not have the proper tool to measure the temperature of rail ends after the pre-heat (4) did not always use his safety glasses and (5) was not clear on the standards for making reference marks. The record includes the handwritten notes of the Carrier official who conducted the conference, which recite that these explanations were provided for the Claimant's disqualification.

It is well settled that the Carrier has the right to determine employee qualifications, and such determinations should not be disturbed by the Board unless they were made in an arbitrary manner. There is no such showing here. The applicable Rule required the Claimant to possess the necessary qualifications for the position at the time he displaced the junior employee. The record demonstrates that the Carrier determined that the Claimant did not possess those qualifications, and communicated its specific reasons for that conclusion to the Claimant and the

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Organization. The Organization has not successfully rebutted the Carrier's rationale for the Claimant's disqualification.

Under these circumstances, there is no basis for overturning the Claimant's disqualification. The claim will 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 30th day of September 2009.