

Award No. 2529
Docket No. MW-2535

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That Frank Messina, Assistant Track Foreman, Gang No. 6, Kinzie Street District, Chicago, Illinois, was unjustly demoted on March 15, 1941; and

(b) That Frank Messina be restored to the rank of Assistant Track Foreman, with seniority unimpaired, and paid the difference between what he earned as section laborer and what he would have earned as assistant track foreman, retroactive to the date of his demotion.

EMPLOYES' STATEMENT OF FACTS: Frank Messina entered the service in May 1911 and thereafter served the Carrier in the capacity of section foreman and assistant foreman within the Chicago Terminal Division, Track Department.

On or about February 13, 1935 Messina was assigned, through reinstatement, as assistant track foreman on Section No. 6, Kinzie Street District, Chicago, Illinois, by instructions of C. M. Dukes, Assistant to Vice President, and served as assistant foreman of Gang No. 6 until March 15, 1941, when he was advised by R. L. Simmons, Roadmaster, that he was disqualified as assistant track foreman effective as of March 15, 1941. The reason given for this action was that a questionnaire on Book of Rules had been checked which developed that Messina had answered 54 percent of the questions correctly.

For approximately 30 years Frank Messina has served the Carrier and rendered satisfactory service, and during his employment as assistant section foreman he had not been required to take an examination. No rules were in effect requiring employes below the rank of section foreman to take such examination.

The position which Frank Messina held on Gang No. 6 was that of assistant track foreman working directly under a foreman. He received instructions from his foreman and reported to his foreman. Messina was not required to make any written reports, nor was he required to keep record of time for employes in the gang.

There is an Agreement in effect between the parties bearing date of November 1, 1940.

suggested many times that he attempt to learn to read and write the English language which would permit him carrying out the duties attached to his position but apparently Mr. Messina never saw fit to do this.

When the new Consolidated Code of Transportation Rules and General Instructions were adopted on this railroad it was considered necessary for all track foremen to undergo examination on certain rules as set out in questionnaire Form 3599, copy of which is shown as Carrier's Exhibit "B."

The correct answers to the various questions, as contained in the catechism covering this questionnaire, are shown in the column headed "Corrections."

The attention of the Board is directed to Carrier's Exhibit "B" particularly the designations indicating whether the questions were answered correctly or incorrectly. It will be noted as above indicated that only approximately 54% of the questions were answered correctly and those which were answered incorrectly will indicate, beyond any question of doubt, that Mr. Messina was not sufficiently familiar with the various rules to properly handle the duties required of an Assistant General Foreman.

Mr. Messina was the only foreman in the Chicago Terminal area who was not immediately subjected to the examination on the Consolidated Code of Transportation Rules and General Instructions but his examination was delayed purposely to afford him an opportunity to study the rules sufficient to pass a satisfactory examination. Apparently he made little effort toward familiarizing himself with the rules because after having had the opportunity of studying them for some two years in filling out the regular questionnaire the answers furnished by Mr. Messina being recorded on the questionnaire by the roadmaster indicate only approximately 54% of his answers as being correct.

As is indicated above the Carrier was not unmindful of Mr. Messina's service with the railroad but from a safety standpoint both of the Carrier and Mr. Messina as well as the employes subject to his supervision it was felt we could not consistently retain him in service in a supervisory capacity and he was therefore disqualified as Assistant General Foreman, his services being restricted to those of a laborer, but with the further understanding that if and when he familiarized himself with the rules sufficient to pass a satisfactory examination he would again be given the opportunity of serving as Assistant General Foreman.

It is believed the information contained herein together with that contained in Carrier's Exhibits "A" and "B" will permit the Board members being sufficiently familiar with the evidence which caused the Carrier to disqualify Mr. Messina and will realize the Carrier had no other alternative than to disqualify him.

OPINION OF BOARD: Claimant entered the service of the carrier in 1911 in the capacity of laborer. He was advanced to a position of section foreman in 1927. Subsequently, aside from comparatively brief periods, he held that, or similar supervisory positions, until March 1941. He was then reduced to the position of laborer. It is contended that his demotion constituted a violation of the controlling agreement.

The occasion for his demotion was his failure to pass an examination on the "Consolidated Code of Transportation Rules and General Instructions." While this code was adopted by the carrier in 1939 claimant was not required to take an examination on it until 1941. He was given this consideration because of his inability to read and write English.

The examination contained many questions which had nothing directly to do with the duties connected with claimant's position. On the other hand many questions did have a direct bearing upon such duties. His answers for

the most part were very indefinite. He, of course, was handicapped by his inability to read and write English. However, from his answers, we think it is apparent that he lacked a fundamental knowledge of symbols, used in the movement of trains, which it should be necessary for one, occupying such a position as he occupied, to know.

Against this apparent lack of knowledge, it is pointed out that he occupied the position for many years without complaint, by the carrier, of the manner in which he performed the duties attendant upon it.

Rule 7 is invoked to sustain his right to retain the position. That rule provides:

"An employe accepting promotion will be given a fair chance to demonstrate his ability to meet the practical requirements of the position, and failing to qualify within thirty (30) calendar days may return to his former position."

There is much substance in the argument that claimant has demonstrated, by long service, his qualifications to perform the duties of the position from which he was demoted notwithstanding his failure to pass a satisfactory examination on the "Consolidated Code of Transportation Rules and General Instructions." However, his qualifications are subject to inquiry from time to time and must necessarily be measured in the light of changing standards of safety in operation.

The duty is on the carrier to maintain the highest standards of safety in the operation of its trains and the maintenance of its track. To do this it is necessary to require of employes a degree of efficiency and knowledge of operating rules commensurate with the responsibility of their respective positions.

Necessarily it develops on the carrier to determine whether or not an employe is qualified to hold a particular position at a particular time. And its judgment (unless arbitrarily or capriciously exercised) of the qualifications of an employe must be accepted. Award No. 2299.

It is charged that the carrier did act arbitrarily and capriciously in demoting claimant. We have been unable to find anything in the record to justify the charge. On the contrary it is implicit in the record that others who could not read and write English took and passed the examination. There is nothing to indicate that anything was required of claimant, in taking the examination, that was not required of the others.

Since it does not appear that the carrier acted arbitrarily or capriciously in finding that claimant's qualifications did not measure up to present standards for the position, we are not justified in disturbing its action in demoting him.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1944.