

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19851
Docket Number MW-19651

Benjamin Rubenstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Inc. (formerly Spokane, Portland
(& Seattle Railway Company)

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

(1) The disqualification of Mr. Odin Lein as a pump repairer by letter dated September 18, 1970 and received on September 21, 1970 was improper and in violation of the Agreement (System File F/MW-14(L)-12-11-70).

(2) Mr. Odin Lein be allowed seniority as a pump repairer as of 8-21-70.

(3) Mr. Odin Lein be allowed the difference between the pump repairer's rate and the Assistant Pump Repairer's rate for each work day of the period of said disqualification (9-21-70 to 2-5-71).

OPINION OF BOARD: Claimant was assigned to a temporary position of pump repairer on August 21, 1970. He worked until September 11, when he went on vacation. On the day he left, he was, orally, advised that he did not qualify for the position. On September 21, he received a letter by "certified mail", reasserting the verbal notice of September 11, 1970.

The organization claims that the carrier violated the provisions of Rule 19 (Failure to Qualify) of the Agreement, which Rule provides that an employee "will not be disqualified for lack of ability to do such work after a period of thirty (30) calendar days thereon". August having thirty one days, the letter received by claimant on September 21, exceeded the time limitation provided for in the Agreement.

The carrier contends that Rule 19(a) does not provide for written notice, and the verbal notice was, therefore, in compliance with the provision.

We have consistently held and adhered to the following principles, guidelines and maxims in interpreting provisions of Agreements;

1. The Board may interpret an ambiguous provision, but has no right or jurisdiction to change or modify an unambiguous provision;

2. A contract provision must be interpreted in its entirety rather than piecemeal;

3. The time limitations of an agreement must be strictly adhered to (9933, 11757, 13942, and numerous others).

Rule 19(a, b and c) is unambiguous. It deals with the failure of an employee to qualify in a new position to which he was assigned. Subdivision(a) provides that if an employee held a position for a period of 30 days, he will not be disqualified for lack of ability. It does not provide that an employee must work thirty days before being disqualified. It provides that such an employee may not be disqualified after holding the position for thirty days. The carrier may find him unqualified, and in fact, must do so, before the expiration of thirty days. The carrier in the instant case apparently did find the claimant unqualified as early as September 11, when it verbally notified him.

The question then arises, whether the verbal notice of September 11 complied with the provisions of Rule 19. Our opinion is that it did not. All three subdivisions of the Rule are and must be considered as a whole. They provide: (a) for time limitations of disqualification; (b) for written notice of disqualification; and (c) procedure for claim of unfair disqualifications. To assume that subdivision (a) is separate from subdivision (b) would give the carrier the right to orally disqualify an employee within the thirty days limitation and then give him written notice six months or a year later. This, certainly, was not the intent of the parties to the agreement. They intended to and did provide for written notice of disqualification within thirty calendar days from the appointment. We can not modify or change the clear provisions of Rule 19.

The notice received by claimant on September 21 was not given in compliance with the provisions of Rule 19. Not having received proper notice, claimant was not obligated to follow the procedure outlined in subdivision (c).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

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Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois this 13th day of July 1973.