

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21932
Docket Number CL-21968

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8343, that:

(1) The Carrier violated the Agreement between the parties when on September 4, 1975 it disqualified Mr. P. A. Walker from Second trick Chief Caller position at Glenwood, Pennsylvania, and

(2) The Carrier shall, as a result of such action, be required to compensate Mr. Walker an additional eight (8) hours pay each date commencing September 5, 1975 and continuing for all subsequent dates, plus overtime rate of pay for all service performed outside the second shift hours of 3:00 PM to 11:00 PM each date, until restored to Second trick Chief Caller position at Glenwood, Pennsylvania.

OPINION OF BOARD: After he was displaced by a senior employe, Claimant exercised displacement rights to a Chief Caller position. Carrier disqualified Claimant after he worked the position for twenty-two (22) days. After a requested hearing was conducted, Carrier reaffirmed the disqualification and this claim was instituted.

Claimant asserts, to this Board, that he "was not afforded thirty (30) days in which to demonstrate his ability to perform the duties." However, allegations relative to this contention were not raised while the matter was under review on the property and, accordingly, they are not properly before us.

Rule 32(d) provides that Supervisors shall give employes "full cooperation...in their efforts to qualify for positions." Our review of the record indicates to us that Claimant received full-time assistance from fully qualified employes during the time he held the position. Further, we find that at no time did Claimant seek assistance from the Trainmaster or any other Supervisor. At Page 4 of the transcript of the hearing, Claimant answered "Yes" when asked, "In your efforts to qualify did Mr. V...and Mr. C...cooperate with you and answer your questions?" That evidence, and the record as a whole, tends to contradict

the Claimant's contention that he was not given full cooperation in his efforts to qualify.

Once a Carrier determines that an employe does not possess sufficient fitness and ability, the employe assumes the burden of presenting evidence to support his contention to the contrary. See, for example, Award 21328.

We feel that Claimant received a fair and impartial hearing and, after thorough review of the entire record, we are unable to find that Claimant met the burden of proof to establish that he was qualified to hold the position.

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 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 the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paul
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.