

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22852
Docket Number CL-22721

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8652)
that:

(a) Carrier violated the Agreement when it wrongfully disqualified Mr. T. L. Sitton from the position of TP-IBM-Yard Clerk at Roodhouse, Illinois on December 20, 1975.

(b) Carrier now be required to reinstate Claimant T. L. Sitton to the position of TP-IBM-Yard Clerk at Roodhouse, Illinois with pay for all time and all rights unimpaired commencing December 20, 1975.

(c) Joint check of payroll records is requested by Employees to ascertain the amount due claimant.

OPINION OF BOARD: Claimant was disqualified from the TP-IBM Yard Clerk position at Roodhouse, Illinois, effective December 20, 1975 regarding his alleged failure to transmit wheel report Train KG-2 from Roodhouse to Bloomington, Illinois on October 26, 1975 and his general performance of this position's duties. This disposition was appealed on the property on both procedural and substantive grounds and is now before this Division.

In reviewing the procedural objections raised in Claimant ex-parte submission, we do not find that the charge in the Notice of Investigation was vague or inconsistent with the clear requirements of Agreement Rule 22 (B). The Notice explicitly stated that the purpose of the investigation was to determine whether Claimant failed to wheel properly Train KG-2 from Roodhouse, Illinois to Bloomington, Illinois on October 26, 1975 and appended for additional consideration his general work performance as TP-IBM Yard Clerk. Moreover, a reading of this Notice does not indicate that Claimant was unaware of the precise focus of the investigation or placed in a disadvantageous position relative to his developing a competent defense. The October 26, 1975 incident was well within the thirty (30) days requirement of Rule 22(B) and not impaired by the reference to his prior general performance.

On the other hand, there is some basic tenability to Claimant's position that Carrier's refusal to acknowledge the local chairman's postponement request at the inception of the hearing affected his due process rights, but the record indicates that the local chairman saw the material he requested on the Wednesday preceding the investigation and there is no correlative contractual requirement obligating Carrier to supply it.

Similarly, it may well be that Claimant was insufficiently trained for this position within the definitional framework and intent of the BRAC Merger Agreement of September 15, 1972, but his right of appeal under any contested violation of Section 11 thereof was pursuant to Section 14(a) of that Agreement.

The evidence shows that the consist for Train KG-2 on October 26, 1975 was shown as being wheeled from Kansas City, Missouri to Bloomington, Springfield and Murrayville, Illinois, instead of from Roodhouse, Illinois to these locations and we will not interpose our judgment of how a particular task is to be completed. His past record demonstrates that he was falling short of the position's expected performance standards and the October 26, 1975 incident confirms these earlier observations.

In Third Division Award 18286, we held in pertinent part that,

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"The determination of an employee's qualification for a position is initially reserved to Carrier. Should Petitioner challenge a Carrier's finding of disqualification, to prevail, it has the burden of proving by factual evidence of probative value that the affected employee did possess the necessary qualifications and had performed them within normally accepted standards...."

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We do not find that Claimant adduced sufficient evidence within the meaning of this decisional holding to prove that he could handle the TP-IBM Yard Clerk's position and thus we will deny the claim.

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

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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:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.