

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23066
Docket Number MW-22889

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

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

(1) The disqualification of J. Frasier, Jr., as assistant foreman at the close of work on June 30, 1977 was without just and sufficient cause /System File P/R Frasier, Joe, Jr./12-8(78-3)J2/.

(2) Mr. J. Frasier, Jr. be allowed seniority as an assistant foreman as of May 2, 1977 and he be compensated for all loss of earnings suffered."

OPINION OF BOARD: The Claimant was disqualified as an Assistant Foreman on June 30, 1977 because of his asserted inability "to work the men", to "keep the machines assigned to you in the proper working condition", and to "plan your daily work ahead".

After a hearing was held on the matter, the Carrier notified the Employee that it reaffirmed its earlier decision that he was not qualified to accept the responsibilities and duties.

The Organization disputes the Carrier's conclusion that the Employee was not qualified, and it presents certain evidence and testimony in an effort to convince us that there is nothing of record to sustain Carrier's decision.

To the contrary, the Claimant demonstrates that Rule 12 vests certain discretionary authority with management, and although Section 4 of Rule 12 provides that employees accepting promotion will be given a fair chance to demonstrate their ability, if they fail to qualify, the position may be declared vacant.

The Carrier reminds us that the Employee received the position "subject to his ability to qualify", and during the sixty (60) days afforded to him in which to qualify he failed to demonstrate the necessary ability.

We do not, in any manner, desire to issue an award which alters the long established concept that management has a right to make initial qualification determinations, and as long as those decisions are not arbitrary, capricious, unreasonable, discriminatory, etc., they should not be disturbed. At the same time, we are disturbed by this record because the evidence indicates to us that, although the Employee may not have been totally qualified on the day he was disqualified, he was making sincere efforts and was demonstrating that he could be a valuable asset in the position.

Our attention has been invited to Third Division Award No. 22620. There, the Board found that the record was inconclusive with respect to either party's position and, as a result, the Claimant should be "...given a reasonable opportunity to qualify...on the next job to which his seniority would entitle him, and we direct Carrier to do so". We would strongly suspect that Award No. 22620 has a very limited sphere of applicability. However, we are not disinclined to follow its principles in a dispute such as this. Accordingly, while we do not disturb the Company's basic contractual rights to disqualify in general terms, nonetheless in this particular case we find that the Claimant should be given a reasonable opportunity to qualify on the next position to which his seniority would entitle him, and we direct the Carrier to grant him that opportunity.

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;

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 disposed of as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.