

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31072
Docket No. SG-31346
95-3-93-3-414

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SP):

Claim on behalf of J.J. Morgan, Jr. for reinstatement to the position of Foreman with payment of all lost wages, beginning May 11, 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 42(b), when it disqualified the Claimant after he had worked more than 30 days on his position. Carrier's File No. Sig 92-14. General Chairman's File No. SWGC-494. BRS File Case No. 9024-SP."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On April 1, 1992, Claimant was assigned to a Signal Foreman position. On May 11, 1992, Claimant was notified by Carrier that he was disqualified as a Signal Foreman. He exercised his craft seniority in accordance with the terms of the negotiated Rules of Agreement.

On May 27, 1992, a claim was initiated by the Organization on Claimant's behalf alleging a violation of Rule 42(b) by Carrier inasmuch as Claimant had performed service as a Foreman for more than 30 calendar days. The Organization's stated position was that "Given that the Carrier went over the time limit expressed in Rule 42, he should now be reinstated with back wages given." The claim was denied and appealed through the normal on-property grievance procedures and is now properly before this Board for final resolution.

Rule 42(b) reads as follows:

"(b) An employee accepting promotion will be granted thirty (30) working days in which to qualify."

The Organization takes the position that inasmuch as the Claimant had performed service on the Foreman's position for more than the 30 working days as stated in Rule 42(b), Carrier's prerogative to determine fitness, ability and qualifications "does not encompass actions such as the arbitrary disqualification of an employee following completion of an initial qualifying period." The Organization further contended that Carrier "provided no explanation or justification for its action" and therefore, its actions "were completely arbitrary."

For its part, Carrier argued that after it had determined that Claimant could not perform the functions required of a Foreman, its subsequent action of disqualification was properly taken. It insisted that Rule 42(b) is not a time limit which restricts Carrier's right to determine qualifications. It contended that Carrier's right to disqualify an unfit employee can occur either before or after the lapse of the 30-day period as long as the employee receives a fair opportunity to qualify for the position. Carrier introduced for the first time before the Board a compilation of observations, opinions and determinations concerning Claimant which had been made by a Signal Supervisor over a period of time beginning on April 7 and continued until May 9, 1992. This report apparently served as the basis of Carrier's determination to disqualify the Claimant on May 11, 1992.

This Board has repeatedly held that a Carrier must be the judge of an employee's fitness, ability and qualifications for a position. Once that judgment has been made by the Carrier, the questioning of such judgment places a burden upon the party doing the questioning to prove by more than assertions that Carrier's actions were arbitrary or capricious. In Third Division Award 4687 the Board held:

"This Division has uniformly held that determination as to ability and fitness is exclusively a managerial function and will be sustained unless it appears that the decision of the Carrier was capricious or arbitrary; that the burden is on Claimant to establish that such was the case, and that if the decision of the Carrier is supported by substantial evidence it will not be disturbed."

To be sure, there have over the years been instances in which Carrier's judgment has been held to have been capricious or arbitrary. However, those instances have been the exception to and do not diminish the general rule which established Carrier's sole right to determine fitness, ability and qualifications.

In this case, Rule 42(b) is not a time limit beyond which qualifications are guaranteed or unilaterally established. In this case, Carrier gave a reason for the disqualification, namely that "Claimant was disqualified as Foreman due to the fact Claimant was unable to perform the duties as a Foreman." The Board is of the opinion that Carrier was less than astute in not providing the Organization with the litany of events which were set forth in the in-house communication dated May 9, 1992, which was introduced into the case file for the first time before the Board. However, even ignoring this in-house letter, which we must do because of its late presentation, Carrier's determination of lack of qualifications, whenever made, is subject to review by this Board only if it is proven by the Organization to have been arbitrary or capricious.

The terms arbitrary and capricious have generally been defined as a willful and unreasoning action taken without consideration of and in disregard of the facts and circumstances of a case. An action is not arbitrary or capricious when it is exercised honestly and upon due consideration.

While Carrier may well have shot themselves in the foot by withholding the vital evidence contained in the May 9 letter, its overall handling of the claim was not totally fatal to its position relative to its action of disqualification for the stated reason that Claimant was unable to perform the duties as a Foreman.

Rather, the Organization was remiss in its obligation to come forward with substantive proof that Claimant was, in fact, qualified for the Foreman position. The mere fact of being assigned to the position for 34 days is not, per se, proof of qualifications. It is noted from the case record, without contradiction by the Organization, that Claimant did not request an Unjust Treatment Hearing which could well have acted as a forum for the Claimant to demonstrate his fitness and ability for the position.

On the basis of the totality of evidence as found in the on-property case record, the claim as presented must be denied for lack of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.