

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31794
Docket No. CL-32002
96-3-94-3-358**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communication International Union
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11056) that:

(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised, particularly Rules 1-B-1, 2-A-1, 2-A-5, 2-B-1, 3-D-1, 6-A-1, 9-A-1, 11-A-1, Appendix E, Appendix L, Appendix N and Qualification Agreement for K Tower dated January 30, 1989, when on the date of April 16, 1992, Claimant John Luby was released from his position of Assistant Train Director, K Tower, past the qualification time limits and without conferring with the Local Chairman and without holding an investigation.

(b) Claimant John Luby released past qualifying time now be allowed the difference between the ATD rate and the Store Attendant rate of pay each and every day beginning April 16, 1992, and to continue each and every day until properly placed back in 'K' Tower and his seniority adjusted in accordance with Appendix N of the current Agreement.

(c) Claim filed in accordance with Rule 7-B-1 of the current Agreement and should be allowed."

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 were given due notice of hearing thereon.

Rule 2-A-5 of the parties' Agreement provides a 30 day time limit within which successful applicants will be allowed to qualify for positions. Rule 2-A-5 reads:

"TIME IN WHICH TO QUALIFY

(a) Employees awarded bulletined positions or exercising displacement rights will be allowed thirty (30) days in which to qualify and failing to qualify may exercise seniority under Rule 3-C-1. The thirty (30) days may be extended by agreement between the Local Chairman and the proper Corporation official.

(b) When it is evident that an employee will not qualify for a position, after conference with the Local Chairman, he may be removed from the position before the expiration of thirty (30) days and be permitted to exercise seniority under Rule 3-C-1. The Division Chairman will be notified in writing the reason for the disqualification.

(c) Employees will be given full cooperation of the department heads and others in their effort to qualify."

For qualifications on Assistant Train Director positions in "K" Tower, the 30 day time limits in Rule 2-A-5 were extended by mutual agreement to 45 days. That agreement, reached on January 4, 1989, and memorialized in a communication between the Terminal Superintendent and the Organization dated January 30, 1989 provided:

"It was agreed the number of days for posting jobs in K Tower would be as follows:

Assistant Train Directors

All positions, initial qualification forty (40) to forty-five (45) days with local chairman and terminal superintendent conferring after forty (40) days. Disqualification after forty-five days. After initial qualification as assistant train director, employees to be considered qualified on all shifts. Qualifications will be based on ability to work blue flags, train orders and establishing routes on the NX machine."

The Claimant was awarded an Assistant Train Director position in "K" Tower in early 1992. After being assigned to the position for 56 days, the Carrier removed him from the job on the basis he was not qualified. The Organization filed the claim under review here contending that the Agreement allowed the Carrier 45 days within which it could disqualify the Claimant without an Investigation. In situations where the qualification period had not been extended by agreement between the Local Chairman and a proper Carrier official, if after 45 days, the Carrier sought to remove the Claimant from the job, it could do so only after placing charges and holding an Investigation to determine his qualifications.

With this the Board agrees.

Rule 2-A-5, as amended to cover Assistant Train Director positions in "K" Tower, gives the Carrier 45 days within which to judge the qualifications of new occupants. The Carrier must make a determination on an employee's qualifications during that time, or if not sure of the employee's qualifications, it must secure an extension from the Organization. The Carrier is not privileged to unilaterally extend the qualification period beyond 45 days without agreement with the Local Chairman. Such a result would make the language of the Rule superfluous.

The Carrier argued that the Claimant was not qualified, that he knew that he was not qualified, and that the Organization never argued that he was qualified; therefore, it makes no difference that it waited until the 56th day to effect his disqualification. With this logic the Board is unable to agree. Why then would the Carrier agree to have the qualification period of Rule 2-A-5 expanded from 30 days to 45 days for "K" Tower, if the existing qualification period in the Rule permitted it to have any length period it found convenient or necessary? The answer is simple. The Carrier wanted a longer period and it was aware that in order to secure a longer period it needed an exception to the Rule, ie., agreement with the Local Chairman.

Now it is trying to persuade the Board that even after securing an expansion of the 30 day qualifying period to 45 days, it can treat the 45 days as 56 days, if it chooses, and it may do so without agreement of the Local Chairman, notwithstanding the specific language of the Rule.

The Board is unwilling to accept this notion as sound. It would negate an essential element of Rule 2-A-5. Carried to its extreme, the Carrier could remove an Assistant Train Director from "K" Tower after a year, or two years, on the basis that he failed to qualify, without charges and an Investigation. Rule 2-A-5, as amended to cover "K" Tower, simply cannot be administered in this fashion. If an employee is not disqualified within the time period provided in the Rule, the only way he may properly be removed from the job is after charges are filed and an Investigation is held, wherein the charges are supported by adequate evidence.

The claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 1996.