

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33917
Docket No. SG-35028
00-3-98-3-787**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern Pacific)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Co. (former Southern Pacific):

Claim on behalf of H.I. Storie for reinstatement to the position of Signal Shop Foreman and for payment of the difference between the Signal Shop Foreman’s rate and the Signalman’s rate, beginning June 6, 1997, and continuing for the term of the violation and any record of this disqualification removed from the Claimant’s record, account Carrier violated the current Signalmen’s Agreement, particularly Rules 53 and 68, when it did not provide the Claimant with an investigation and assessed discipline against him without meeting the burden of proving the charges. Carrier’s File No. 1109701. General Chairman’s File No. SWGC-1544. BRS File Case No. 10790-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 were given due notice of hearing thereon.

Claimant held the position of Signal Shop Foreman since October 5, 1990. However, on June 6, 1997 Carrier disqualified him, advising him in writing that the disqualification was

based "... on an observed and documented pattern of continued failure to adequately perform the . . . functions of a foreman . . . (and that) there has been no improvement in your performance despite repeated explanations of what is required and expected of a signal foreman."

The Organization contends that the Carrier disciplined the Claimant and that it violated the parties' agreement when it did so without first conducting a disciplinary investigation and because it did not have cause for the discipline. The Carrier on the other hand argues that a disqualification does not constitute discipline and that the only contractual requirement that it had to follow, which it did, was to ensure that the disqualification was not arbitrary or capricious.

We agree with the Carrier on all counts. The Board has repeatedly held that disqualification does not constitute discipline (Third Division Awards 21596 and 24626) and that it has done so even under circumstances where the disqualification was performance or behaviorally based (Third Division Award 20045). Thus, the only requirement imposed on the Carrier was to ensure that the disqualification was not arbitrary and capricious. In this regard the Organization contends that the Carrier did not meet this obligation because it failed to advise the Claimant of the basis for the disqualification. The record shows however that the Carrier did in fact provide written explanation to the Claimant referencing his "... documented pattern of continued failure to adequately perform...the functions of a foreman" Therefore, because the Claimant was advised and there is nothing in the record to show that the basis for the disqualification was in some other fashion arbitrary and capricious, the claim must fail.

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 24th day of January, 2000.