

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36404
Docket No. SG-36254
03-3-00-3-483

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
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of G. E. Pankey for reinstatement to the position of Assistant Signal Foreman with compensation for the difference between the rate of Assistant Signal Foreman and that of any lower paying position beginning on June 29, 1999, and continuing, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when Carrier improperly disqualified the Claimant. Carrier File No. 1197212. General Chairman’s File No. SWGC-2007. BRS File Case No. 11235-UP.”

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.

This dispute concerns the disqualification of the Claimant from a position of Assistant Signal Foreman. The chronology of the events and the nature of the evidence

found in this case is important to a full consideration of the merits, or lack thereof, of the Carrier's action.

The record is clear that the Claimant worked as a Signal Foreman from December 1998, to some unspecified date in May 1999. At that time he acquired a position of Assistant Signal Foreman. While working on the position of Assistant Signal Foreman, the Claimant was notified by letter dated June 29, 1999, that he was disqualified as an Assistant Signal Foreman because of an alleged failure to comply with instructions and to complete an assigned task in a timely manner "during the week of May 21 thru 23, 1999." Neither the instructions nor the assigned task referenced in the letter of disqualification were identified in any detail.

Subsequently, after the Organization informed the Carrier that the Claimant was not working as an Assistant Signal Foreman on the dates mentioned - May 21 thru May 23, 1999 - but rather was working as a Signal Foreman at that time, the Carrier, by letter dated August 4, 1999, issued a "corrected letter" of disqualification. This time the Carrier alleged that the Claimant had failed to comply with instructions and complete an assigned task in a timely manner "during the week of June 21 to June 23, 1999" while working on Signal Gang No. 8256. Again, neither the instructions nor the assigned task referenced in the corrected letter of disqualification were identified in any detail.

In support of its position, the Carrier subsequently cited a letter of warning that had allegedly been issued to the Claimant on "May 6, 1999," which the Claimant refused to acknowledge receipt of. This is the sole bit of evidence that was given to the Organization by the Carrier during the on-property handling of this dispute. There is just one problem with this evidence. The letter in question was actually dated May 6, 1998 and concerned an alleged situation when the Claimant was working with Signal Gang No. 5739 on April 26, 1998. Clearly it did not concern itself with the instant situation.

Before the Board, the Carrier introduced a detailed document dated November 3, 1999 from the Manager Signal Construction in which he outlined his reasons for disqualifying the Claimant as an Assistant Signal Foreman. There is no evidence in the case record to show that this document was ever introduced during the on-property discussions. The Carrier did in one of its on-property exchanges with the Organization cite a purported excerpt from a statement from the Manager Signal Construction. However, that document was not included by the Carrier in the case record. The

quoted excerpt is not part of the November 3, 1999 document from the Manager Signal Construction that was presented to the Board.

There is no question but that a Carrier has the right and responsibility to determine the qualifications of its employees. The Board has so held in cases too numerous to require citation. However, that right and responsibility does not operate in a vacuum. In situations of this type the burden of proof shifts to the Carrier to support its position by "... a substantive body of evidence to substantiate the position taken" (Third Division Award 12931). At the very least, the employee disqualified and the representative Organization have the right to know exactly why the disqualification is being made. As the Board held in Third Division Award 19660, we "... must find some evidence of record which provides a reasonable basis for Carrier's disqualification...." (Emphasis added) Similar opinion is found in Second Division Award 11633.

In this case, on the basis of this record, there is insufficient evidence of record to support the position taken by the Carrier. Accordingly, we must sustain the claim as presented.

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 18th day of February 2003.