

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38038  
Docket No. CL-38247  
06-3-04-3-260

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(CSX Transportation, Inc. (former Seaboard  
( Coastline Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13042) that:

1. The Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rules 7, 38 and possibly other rules of the Agreement, on April 8, 2003, when it disqualified Customer Service Representative R. E. Vance, ID #775968, off of Position 4ECA-208 and all similar positions in the Customer Service Center at Jacksonville, Florida, and upheld that decision following an investigation conducted at Jacksonville, Florida on May 6, 2003.
2. As a result of the above-stated violation, Carrier shall:
  - a. Remove the disqualification status from Employee R. E. Vance’s record, reinstating him to Position 4ECA-208.
  - b. Compensate Clerk R. E. Vance for all time lost while restricted from Position 4ECA-208, beginning on April 8, 2003, and continue until this violation is corrected. This lost time includes:
    - 1) The difference in what he earns (\$160.90) and the time and one-half rate for each day he performs service on the rest days of the Position No. 4ECA-208, beginning on April 8,

2003, and continue until this violation is corrected.

- 2) Compensation at the straight-time rate on the rest days of Position No. 4EGL-211, which position No. 4ECA-208 is assigned to work, beginning on April 8, 2003, and continuing until this violation is corrected.
  - 3) Compensation of the difference in what he earned and the time and one-half rate of pay when he performed service outside the assigned hours of Position No. 4ECA-208, beginning on April 8, 2003 and continuing until this violation is corrected. Thus, the Carrier is placed on notice to retain such records until this claim is resolved.
- c. Clear Claimant's personal record of any reference to the investigation held on May 6\*, 2003, and the decision rendered, as well as the disqualification on Position 4ECA-208 and all similar positions.

\* - Date corrected to May 6, 2003."

**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.

The essential facts in this case are not in dispute. On March 26, 2003, Claimant R. E. Vance was displaced by a senior employee. The Claimant bid to Customer Service Representative Position 4ECA-208 in Jacksonville, Florida, and began work on that position on March 31, 2003. By letter dated April 8, 2005, he was notified that he was disqualified from that position. The notification letter read, in pertinent part, as follows:

“Based on your performance since April 1, 2003, it has been determined that you do not possess the fitness and ability to qualify on position 4ECA-208 Customer Service Representative.

Therefore, effective with the close of business Tuesday, April 8, 2003, you are being disqualified from this and all similar positions. . . .”

On April 11, 2003, the Claimant filed a letter with the Director of Customer Operations requesting an “Unjust Treatment Hearing” under the provisions of Rule 40. Following the Unjust Treatment Hearing that was held on May 6, 2003, the Carrier notified the Claimant that there was no reason, based upon the transcript of the Hearing, to reverse its decision. The matter was subsequently appealed and progressed through the relevant stages in accordance with the Agreement between the parties. It is therefore properly before the Board for resolution.

At issue in this case is the Carrier’s interpretation and application of Rule 12 of the Agreement. The relevant portions of that Rule are as follows:

“(a) Except as provided in Rules 7 and 11(f), an employee bidding on or awarded a bulletined position or exercising displacement rights will be allowed thirty (30) working days in which to qualify.

As agreed, in the application of Rule 12(a), it is understood and agreed that an employee bidding for a position or exercising displacement rights will be allowed reasonable and necessary time to qualify, not to exceed thirty (30) working days, subject to the provisions of Rules 7 and 12(b). An employee will be given full cooperation of department heads and others in his efforts to qualify.

**Note: An employee who has been disqualified on a position will not be again assigned to or allowed to displace on this position or a similar position unless he can demonstrate to Carrier representatives he has improved his skills to do such type work.**

**(b) When it is determined that the employee cannot qualify, he may be removed before the expiration of thirty (30) working days, subject to appeal under provisions of the unjust treatment rule."**

The Organization contends that the supervisors overseeing the Claimant's training period in the position at issue simply "went through the motions" and did not give him adequate time to succeed in a position the Carrier acknowledged was quite complex. It also suggests that the employee being bumped by the Claimant, who was retained to help the Claimant with his training, had no interest in seeing the Claimant qualify for the job, because, once the Claimant qualified, the employee he bumped would have to, in turn, exercise her seniority to bump elsewhere.

The Carrier contends that it offered the Claimant ample opportunity to qualify on the position in question, but he was unable to do so. It notes that the "normal" time to qualify for the position is three days. However, the Carrier points out, the Claimant refused additional one-on-one training on video when it was offered. Moreover, the Claimant was allowed an additional three days to qualify, and still was unable to do so. The Carrier disputes the Organization's contention that the Claimant was treated unfairly.

The Board reviewed the transcript in this matter. It is apparent from testimony of the Carrier's witnesses that the Claimant was not gaining the skills he needed in the use of the AEI (video verification system). When questioned regarding his failure to qualify, the Claimant contended that the system on which he was supposed to be qualifying was not working properly, and that he felt the Carrier was harassing him by giving him so few days to qualify. Yet, there is no evidence in the record to show that the Carrier's determination of the Claimant's inability to progress in his attempt to learn the use of the AEI was arbitrary, discriminatory or unreasonable.

On the contrary, it appears from the record that the Claimant had determined at the outset that the required time for qualification was unfair and was

prepared to confirm his perceptions in that regard. There is no indication, moreover, other than the Claimant's assertions, that the system was in fact broken. Accordingly, we do not find that he was unjustly treated in being disqualified prior to the maximum 30 day period.

However, we note that Rule 12 provides for a "second chance" for employees who are unable to qualify for positions into which they have bumped. Specifically, the Note appended to Rule 12 (a) allows that an employee who "can demonstrate to Carrier representatives that he has improved his skills to do such type work" may be allowed to displace on a similar position. Accordingly, a "permanent" disqualification does not respect the wording of the Note to Rule 12(a).

Nothing in the record addresses whether the Claimant has "improved his skills" between the time he was disqualified and now. However, should he do so, and should he be able to demonstrate to the Carrier that he has, the Claimant shall be allowed, when the opportunity permits, to bid into a position similar to the one from which he was disqualified in the matter presently before the Board, and shall have the opportunity to demonstrate his fitness and ability to perform the work at issue.

#### AWARD

Claim sustained in accordance with the Findings.

#### 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 21st day of December 2006.