

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40205
Docket No. MW-38503
09-3-NRAB-00003-040473
(04-3-473)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier did not allow Mr. J. Ashcraft to establish seniority on the Assistant Hoisting Engineer Seniority Rosters in connection with his June 10, 2003 Bulletin GSBB00652 assignment, effective June 13, 2003, to an assistant hoisting engineer position on Gang 9302 (System File MW-03-283/1373646 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Ashcraft shall now have his assistant hoisting engineer seniority rights, in connection with the aforesaid assignment, established on the applicable seniority rosters.”**

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 A. J. Ashcraft established and holds seniority in the Maintenance of Way Department dating from January 29, 1979. He has been assigned as a Trackman, Welder Helper, Welder, and System Bridge Welder. The instant dispute involves his disqualification as an Assistant Hoisting Engineer effective July 3, 2003.

In June 2003, the Claimant applied to be an Assistant Hoisting Engineer on System Bridge Gang 9302. The Claimant did not have seniority in this classification, but was assigned to the position effective June 13, 2003. He reported on June 20 and worked the position from June 20 to 23 and on July 1, 2003. The Claimant then bid back to his former position as a Bridge Welder during the next bid cycle. Thus, he only worked as an Assistant Hoisting Engineer for a period of five days. Because the Claimant had not worked the position for a sufficient length of time to demonstrate proficiency in the operation of a crane, the Claimant was disqualified from the position of Assistant Hoisting Engineer.

The Organization contends that the Claimant is qualified for the position of Assistant Hoisting Engineer. It claims that the Claimant was improperly disqualified from the position. Although he had worked for a period of only five days, he had done so without incident and, therefore, he should be deemed qualified. As a remedy, the Organization asks that the Carrier remove the disqualification from the Claimant's work record and requests that he be deemed qualified as an Assistant Hoisting Engineer.

Conversely, the Carrier contends that the burden is on the Organization to prove that the Claimant was qualified for the Assistant Hoisting Engineer position. The Carrier contends that it reasonably determined that based on the extremely limited time that the Claimant worked the position, he had not performed service for a sufficient time period so as to qualify and the Carrier acted properly in disqualifying him.

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After a review of the evidence and positions of the parties, the Board agrees with the Carrier that based on the Claimant's limited amount of time working as an Assistant Hoisting Engineer, the Carrier acted appropriately in disqualifying him from said position. This result is consistent with Third Division Award 36540, in which the Board held that an employee who bid off the position of Foreman after working only ten days on that position was deemed unqualified. The Organization failed to meet its burden to prove that the Carrier acted improperly in disqualifying the Claimant from the Assistant Hoisting Engineer position. Accordingly, the claim is denied.

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 21st day of December 2009.