

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40527
Docket No. SG-39616
10-3-NRAB-00003-060420
(06-3-420)

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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:

Claim on behalf of M. A. Grimsley, for reinstatement to his Signal Foreman’s position and compensation for the difference in pay between the Signalman’s rate and the Signal Foreman’s rate he should have received, account Carrier violated the current Signalmen’s Agreement, particularly Rules 52, 68 and 70, when it disqualified the Claimant from his Signal Foreman’s position without just cause. Carrier compounded this violation when it failed to provide the Claimant or his representative with a copy of the transcript of the proceedings and any reason for the Claimant’s disqualification as a result of an unjust treatment hearing held on March 31, 2005. Carrier’s File No. 1428877. General Chairman’s File No. N 70 538. BRS File Case No. 13628-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.

On March 10, 2005, the Claimant was disqualified as Signal Foreman. The Claimant requested an Unjust Treatment Hearing under Rule 70, arguing that he was unjustly disqualified from his position. Thereafter the dispute between the Carrier and Organization involves procedural issues, as well as arguments over the basis of the Claimant's removal.

The Board reviewed the Organization's arguments that the Carrier failed to properly follow Rule 68B and Rule 70 when the Claimant was removed and provided an Unjust Treatment Hearing. The Board studied the dates, Rules and transcript. We find no error, particularly with regard to time limits in decision making, which is not referenced in the Rule. The Claimant was permitted all of his rights under the Agreement.

On the substance of the removal, the Board studied the arguments in the Claimant's defense. The testimony by Supervisor Nash as to counseling and events is clear, convincing, and substantively covers several instances. The Board reviewed the counseling letter of October 4, 2004. We considered the disqualification notice of March 10, 2005 and the events referenced as five specific incidents thereafter. The Carrier argues, in pertinent part, that its decision was due in part to these facts:

"Claimant's gang was working in the Red Zone with Claimant as the EIC, yet Claimant was not even at that location. Claimant climbed up a boom when it was stuck in the up position, trying to shake it loose, endangering himself and possibly other gang members, and setting a bad example to the gang he supervised. Claimant double-bonded a crossing circuit, even though the Yellow Book

instructions indicted it was supposed to be one (1) railhead bond and a long bond around the joint (tr.pp.14). Claimant also drove the Chase truck, after indicating on the conference call that the truck was not safe to drive (tr.pp.15). Claimant was in charge of building a burm, putting the poles down deep, level with the top of the burm, and put guy wires around to hold in place. When Nash inspected, he determined that they were only a couple feet deep with no cable holding them in place (tr.pp.15). Claimant had received discipline for riding the side of a rail car on a slow-moving train in view of Claimant's entire gang (tr. pp. 16)."

In defense of the Claimant, the Organization provided an explanation for each of the above events and others. The Claimant testified to each event, his length of service, the work errors of employees, and to the fact that he had built berms or bonded per instructions.

The Board finds that the Carrier proved by numerous examples that the Claimant lacked fitness and ability. Nevertheless, it is not the Carrier, but the Organization who bears the burden of proof in this case. It is the Organization that must provide factual evidence in fitness and ability decisions to demonstrate that the Carrier's judgment was arbitrary or capricious.

In this record the Board notes that the Claimant admitted that all of the incidents occurred. The Claimant demonstrated a pattern of separate incidents, including (1) failure to release a track warrant (2) failure in being at the work site when he was the designated Employee In Charge (3) failure to have his briefing books in order and (4) failure to follow a number of Carrier Rules and Policies, including the manner in which he climbed the boom on the truck. The Organization failed to show that the Carrier's decision was subjective, discriminatory, capricious, or based on any factual error. The Organization failed to provide proof to overturn the Carrier's decision. There is no evidence whatsoever that the Carrier's judgment was wrong. Accordingly, the claim must be denied.

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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 15th day of June 2010.