Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40928
Docket No. MW-41077
11-3-NRAB-00003-090430

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
(
(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 improperly disqualified and removed Bridge Foreman C. Wurzbach from his foreman position on System Bridge Gang 9315 on March 28, 2008 (System File MW-08-72/1504344 MPR).

(2) As a consequence of the violation referred to in Part (1) above, Claimant C. Wurzbach shall now have his System B&B Gang Foreman qualifications and seniority status reinstated and he shall be compensated for the difference in pay between the System B&B Foreman rate and the System B&B Assistant Foreman rate for all straight time and overtime worked by System Gang 9315 beginning March 28, 2008 and continuing."

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 involves whether the Carrier was correct in its disqualification of the Claimant. The facts indicate that at the end of the March 10, 2008, bidding cycle, the Claimant was the only employee who had bid on Bulletin GSBS01381, a B&B System Foreman position. At the time the Claimant made application for the position, he did not hold B&B System Foreman seniority, but because he was the only bidder for this position, and he met the CDL/DOT, Hy-Rail requirements and was Crane Safety Certified, he was awarded the position effective March 14, 2008. The Claimant began work on the position on March 24 and he was subsequently disqualified by the Carrier four days later on March 28, 2008.

It is the position of the Organization that the Claimant had the requisite "fitness and ability" to be assigned the position and he satisfactorily performed the duties for four days before the Carrier disqualified him. It argued that the Carrier failed to offer him sufficient training and supervision to become fully qualified within a reasonable period of time. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that the person assigned to the position in dispute must have the knowledge and skill sets to effectively direct the other employees on the gang properly and safely perform their specific functions. It argued that in this instance it became quickly apparent that the Claimant did not possess the basic, fundamental skills required for the position because he did not have the knowledge and/or experience needed regarding building bridges and very limited experience in bridge maintenance. Additionally, he did not show the requisite ability to enter his time on the GMS Timekeeping System. Because of all of those reasons he was disqualified. It closed by asking that the instant claim remain denied.

The facts indicate that the Claimant was awarded the subject B&B Foreman position on the basis that he was the only employee who bid on the position and he met the CDL/DOT, Hy-Rail requirements and was Crane Safety Certified. Shortly thereafter, the Carrier determined that the Claimant could not handle the position. The Manager of Bridge Construction assessed the Claimant's abilities in a written statement as follows:

> "System bridge foreman positions are not training positions. We do not try to make allowances for employees that have some basic maintenance skills and experience. Mr. Wursbach had no experience at all in construction of bridges and little to no experience in maintenance. He could not even turn in his time. The Supervisor Richard Ulum had other duties and gangs to take care of and did not have the time to sit with Mr. Wursbach all day trying to teach him how to build a bridge. This employee knew nothing at all about building bridges." (Emphasis added)

The Manager's statement was not refuted. The position in question was one of leadership wherein the Foreman needed to be able to lead and instruct others. In this instance the record verifies that the Claimant had no experience in bridge building and very little in bridge maintenance. It is clear that he did not have the necessary abilities to oversee the construction of bridges and/or rebuilding and could not have been reasonably expected to acquire that knowledge within the timeframe defined by Rule 19(c). The Organization did not meet its burden of proof that the Carrier violated the Agreement when it disqualified the Claimant after he demonstrated a lack of proficiency. Therefore, the Board finds and holds that 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 24th day of March 2011.