

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41582
Docket No. MW-41527
13-3-NRAB-00003-110114**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The disqualification of Mr. Ron L. Beckhorn from his water service mechanic position on Gang 8094 by Manager R. Young on July 3, 2009 and upheld by Manager S. Strickland on November 19, 2009 was unjust and in violation of the Agreement (Carrier’s File 1529509 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘. . . Claimant Ron L. Beckhorn’s unjustified disqualification in the class of Water Service Mechanic be immediately rescinded and expunged from his records and that he be compensated for the difference in net wages lost, between his current position and that of a Water Service Mechanic, including straight time and overtime, as a result of the Carrier’s actions since the date of his disqualification and continuing until he is returned to his former position of Water Service Mechanic on Gang 8094. ***”**

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 Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it disqualified the Claimant from his position as a Water Service Mechanic effective July 3, 2009.

The Organization contends that the instant claim should be sustained in its entirety because (1) the Carrier violated the Agreement by disqualifying the Claimant after only four days' time when the Claimant had thirty days to prove himself to be competent in his new position (2) the Carrier's decision to disqualify the Claimant was based upon rank hearsay, and (3) the Carrier failed to establish any probative grounds for the Claimant's disqualification and thereby demonstrated its bad faith in preferring a less senior employee. The Carrier counters that the instant claim should be denied in its entirety because (1) management quickly determined that the Claimant did not have even the basic knowledge and skills required for the position, and (2) the Organization failed to meet its burden of proof in this matter.

The Board carefully reviewed the record evidence and testimony and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it disqualified the Claimant from his Water Service Mechanic position on July 3, 2009.

It is fundamental that the Carrier has the managerial right to determine the qualifications for a particular position. It also has the right to determine whether the individual, during his or her trial period, has the necessary abilities to perform the job. The Claimant was awarded the position because he was the only bidder for that position. In a very short period of time, the Claimant made it clear to the Carrier that he could not identify the issues associated with the job (he did not properly lock out - tag out) and he made several other mistakes which gravely concerned the Carrier. The Claimant admitted that he did not know certain basic things.

Although the Organization argues that management should provide guidance for an employee going through training, the Claimant himself admitted that he could not become qualified within 30 days.

For all the above reasons, the Board must find that the Carrier did not violate the Agreement when it determined that the Claimant was not qualified to perform the work of the position and disqualified him from it. Therefore, the claim must be 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 18th day of March 2013.