

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41585
Docket No. MW-41621
13-3-NRAB-00003-110265**

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**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, by letter allegedly dated January 22, 2010, the Carrier improperly and unjustly disqualified Mr. J. Centeno from his system ballast regulator operator position (System File D-10-25G/1534714).**
- (2) As a consequence of the violation referred to in Part (1) above, said letter of disqualification against Claimant J. Centeno shall ‘. . . now be rescinded and expunged from his work history record in its entirety. . . .’”**

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 improperly and unjustly disqualified the Claimant from his position as a Ballast Regulator Operator.

The Organization contends that the claim should be sustained in its entirety because (1) the Claimant's disqualification was unjust, improper, and on the basis of unproven allegations (2) there is no evidence demonstrating the Claimant's inability to competently perform the functions required of the position in question and (3) the record demonstrates that the Carrier's disqualification of the Claimant was tardy, underhanded, and in retaliatory response to his safety-related complaints. The Carrier counters that the claim should be denied in its entirety because (1) the Claimant failed to follow instructions and demonstrated his inability to properly operate the machine (2) there was nothing arbitrary or unreasonable in the Carrier's decision to disqualify the Claimant (3) arbitral precedent affirms the Carrier's managerial right to determine an employee's qualifications for a position, and (4) the Organization failed to satisfy its burden of proof.

The Board carefully reviewed the record evidence and finds that the Organization failed to meet its burden to prove that the Carrier improperly and unjustifiably disqualified the Claimant from his Ballast Regulator Operator position.

It is fundamental that the Carrier has the right to determine the qualifications for positions and to make sure that its employees meet those qualifications. The record reveals that the Carrier had observed the Claimant attempting to work as a Ballast Regulator Operator. The Carrier observed that the Claimant was unable to properly perform the required duties. The record contains specific actions and inactions on the part of the Claimant that demonstrated to the Carrier the Claimant's inability to perform the duties of the job. The Claimant worked too close to a crane on one occasion; he said he did not perform certain functions of a job on another occasion; and when he was given instructions from a

Foreman, he disappeared from the area and did not perform the work that was required. The Board finds that the Carrier properly determined that the Claimant had failed to demonstrate the appropriate safe behavior to work on that position. The Organization failed to show with sufficient evidence that it was the Claimant's actions in raising safety concerns that led to his disqualification.

As stated above, the Carrier has the right to set job qualification standards. In this case, the Claimant failed to meet those standards and he was properly disqualified. 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.