

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42354
Docket No. MW-42138
16-3-NRAB-00003-120373**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly removed and unjustly withheld Mr. R. Prescott from his B&B Inspector position effective July 22, 2009 and continuing (System File S-P-1455-G/11-10-0022 BNR).**
- (2) The Agreement was violated when the Carrier failed and refused to assign Mr. R. Prescott to a bridge inspector position on Award Bulletin N0908A with a report date of August 24, 2009 and instead assigned junior employee J. Peterson (System File S-P-1454-G/11-10-0021).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant R. Prescott shall now ‘. . . be re-instated with full seniority and be fully compensated for each and every day, including any overtime missed, and any and all benefits he would have otherwise been entitled, that the Carrier has held him off of his position, all at the Bridge Inspector’s rate of pay. ***’**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant R. Prescott shall now ‘. . . be allowed eight (8.0) hours for each scheduled work day since the report date of August 24, 2009 and all of the overtime hours at the overtime rate of time**

and one-half and double time that was worked by Mr. Peterson and any employee subsequently assigned to the position, all at the Bridge Inspectors rate of pay, and all benefits that the Claimant did not receive because of these violations.”

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 June 22, 2009, Claimant reported to Bridge Inspector Position 18658 in Tacoma, Washington. He had previously worked as a B&B Foreman, but never as a Bridge Inspector. A seasoned Bridge Inspector, D. Loveland, was assigned to give assistance.

On July 21, 2009, Structures Supervisor M. Schram accompanied Claimant to Seattle and observed him make an annual inspection of the King Street Tunnel. Schram noted that Claimant failed to get track authority and claimed he had no HLCS training or briefing. He later said he was not sure whether the HLCS system was working and was trying to figure out how to test it. In Schram's assessment, Claimant demonstrated no ability to operate HLCS and no ability to get track and time, a fundamental aspect of the job. As a result, Claimant was disqualified from the Bridge Inspector Position, the job was abolished, and a new, identical job was bulletined. Claimant attempted to use his seniority to get the newly bulletined position but it was assigned to a junior employee.

It is the Carrier's position that Claimant admitted he was not able to use HLCS, which is required to secure main track authority in an HLCS-equipped vehicle. The ability to get main track authority is required for inspections and is a critical part of a Bridge Inspector's job. The disqualification decision was upheld at

an Unjust Treatment Proceeding. Claimant has the burden to prove he was qualified and he could not do this. The Organization has to show the Company abused its discretion by being arbitrary, capricious or discriminatory. The decision was not arbitrary because Claimant could not demonstrate the ability to obtain track authority. Claimant was trying to get the job back that he had just been disqualified from. Nothing had changed. He would have to take an affirmative action, train with a structure supervisor, take a class, or demonstrate affirmative step to qualify.

It is the position of the Organization there was no justification for withholding him in the first place, then a second violation occurred when he bid on the Bridge Inspector position and it went to a junior employee. The Organization claims he was told he could bid on future Bridge Inspector positions. He had the same qualifications as the new person assigned to the position, except he was more senior. The fact that he was allowed to go back to a foreman job establishes his qualifications to work as a Bridge Inspector; the qualifications are the same. Other letters give specific periods of disqualification; his did not provide for any time limitation.

The letter notifying Claimant of his disqualification did not specify a time period for disqualification before he could reapply for the Bridge Inspector position. Rather, it simply stated as follows:

“This letter is to inform you of your disqualification of the position of Bridge Inspector headquartered out of Tacoma Washington. You have spent the majority of your time with the most senior and knowledgeable Bridge Inspector on the Northwest Territory to learn the aspects that are unique to the job as a Bridge Inspector. In this time you have had great opportunities to communicate any concerns or ask questions about these unique job tasks to either the senior Bridge Inspector or myself. As we proceeded today with the qualification of this position it was very apparent that you could not attain any form of authority to gain us access onto the rail. This is a very important and crucial job task of any Bridge Inspector in being able to fulfill his duties to maintain and inspect the BNSF Railway to keep it safe and operational for BNSF and our customers.”

At the time this letter was written, Claimant had demonstrated a lack of knowledge regarding the critical duty of obtaining track authority. Hence, his removal from the job was not a violation.

It is not reasonable to interpret this letter to mean that Claimant could automatically and instantaneously qualify for an identical position. The Board finds that Claimant would have requalified for a Bridge Inspector position after a reasonable amount of time in his Foreman's position. There is no need for the Board to specify what a reasonable amount of time would have been because the position of concern was bulletined immediately upon abolishment of Claimant's Bridge Inspector position. The Carrier determined that an employee who has just been disqualified from a position is not immediately qualified for an identical position. Rather, there must be some demonstration that the finding of disqualification is no longer valid, such as the passage of time and/or service in a position entailing relevant duties. This determination was not an abuse of discretion.

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 30th day of August 2016.