

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42619  
Docket No. MW-42989  
17-3-NRAB-00003-150172**

**The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier’s disqualification of Mr. T. Elliott from the position of Bridge and Building (B&B) Inspector for St. Joseph, Napier, Creston and Farragut Subdivision on July 23, 2013 and the decision to uphold such disqualification following an unjust treatment hearing held on October 10, 2013 was without just and sufficient cause and in violation of the Agreement (System File C-14-A040-1/10-14-0072 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the disqualification of Claimant T. Elliott shall be overturned, he shall receive a foreman/bridge inspector seniority date of June 30, 2013, his record shall be cleared of any reference to said disqualification and he shall be compensated at the applicable B&B foreman rate for all hours (straight time and overtime) worked by Mr. B. L. Minich during his disqualification.”**

**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 Carrier asserts that a qualification period is not a training period and that the Claimant failed to qualify because he failed to identify known defects and because he failed a verbal test related to the position. Determination of qualifications is for the Carrier, not the Board.**

**The Organization insists that the Claimant was not provided a reasonable opportunity to qualify for the position because he received no instructions, guidance or directives to relevant materials. Therefore, the claim should be sustained and he should be placed in the position.**

**This is a distressing case. Claimant bid on and was awarded the position of Bridge and Building Inspector, which seemingly primarily or exclusively involved inspecting bridges. By his own admission, Claimant came to the position without previous bridge inspection experience. Louis Welte, Supervisor Structures and Claimant's new Supervisor, did little or nothing to guide the Claimant to materials that would have given him necessary knowledge and tools needed to be successful in the position, nor did Supervisor Welte share his expectations with the Claimant. Conversely, even though the Claimant was inexperienced, he seemingly did not take the initiative to learn what was expected of him or to identify or have identified sources that might have provided the knowledge and insight necessary to be successful. Under the circumstances, the Claimant's inability to do well on a verbal test given to him by Supervisor Welte two weeks into the new position may have been a forgone conclusion. While it is true that the Claimant was not sent to classes for bridge Inspectors as was Mr. Kirkpatrick in Omaha, NE, the Carrier explained that no such classes were available when the Claimant won his bid.**

**In the final analysis, it is critical to note that the Claimant was given a qualification period, not a training period, and that it is the Carrier's right to determine job qualifications. The record evidence indicates that the Claimant was**

not a qualified Bridge Inspector and was not conversant with basic concepts at the time of his disqualification. A Bridge Inspector must identify anything from minor to potentially catastrophic defects in bridges used by rail traffic. Failure or inability to identify defects could lead to potentially serious, if not catastrophic consequences. The Carrier was not obligated and could not afford to allow an unqualified Bridge Inspector to learn the job from scratch.

**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 27th day of June 2017.