

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42888
Docket No. MW-43676
18-3-NRAB-00003-160469**

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: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Claimant S. Taylor to exercise his authority and displace junior employee R. Chadbourne from a Bridge and Building (B&B) foreman position beginning March 23, 2015 and continuing (Carrier’s File MW-15-28 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Taylor must be allowed all time and compensation earned by junior employees who were allowed to work the subject B&B Foreman position beginning March 23, 2015 and continuing. This includes \$5,290.73 for the dates of March 23, 2015 through April 19, 2015 and he must be compensated for all additional hours subsequent to April 19, 2015 worked by the junior employees until the violation ceases.”**

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 Claimant has seniority in the Bridge & Building (B&B) Sub-Department. On February 10, 2014, the Carrier informed the Claimant of his disqualification as a B&B Foreman because he had failed the B&B test. He retook the test on March 20, 2015 and passed. Thereafter the Carrier denied a request that the Claimant displace a junior B&B Foreman, but allowed Mr. Bolduc, who had also passed the test, was junior to the Claimant and was said to have additional qualifications to displace Foreman Chadbourne. A timely claim was filed on the Claimant's behalf.

The Organization contends that the Claimant should have been requalified, as was Mr. Bolduc, after passing the B&B Foreman test and should have been allowed to replace Foreman Chadbourne. The Claimant had been disqualified only because he had failed the test. If passing the test was not enough to be requalified, failing should not have been enough to disqualify the Claimant. The Carrier has not explained what additional qualifications are necessary. Any information about the Claimant's work and alleged unsafe actions in 2013 and 2014 is irrelevant to his 2015 qualification. He should receive compensation equal to that received by the junior employees allowed to remain in the position.

The Carrier avers that the Organization has failed to meet its burden of proof so that there is no basis for the claim. The Claimant failed the B&B test twice in 2014 before passing it on March 20, 2015. Passing the test qualified him as a B&B Mechanic but not as a B&B Foreman because the Claimant lacked the other requisite Foreman qualifications about which he had been previously counseled. He had been given time to show his ability as a Foreman, but showed no improvement. He was not qualified as a B&B Foreman and had no right to hold the position. Past practice and industry standard give the Carrier the sole responsibility and authority to determine qualifications, particularly for a Foreman position. PLB 5418 Award

No. 23 supports the Carrier's position. The Organization has misused former Personnel Manager Evans' February 10, 2014 letter to the Claimant. The fact that qualifications necessary in addition to passing the test were not mentioned in the disqualification letter did not eliminate such qualifications from consideration or from being enforced by the Carrier. The Organization cannot dictate the Carrier's own policy. The February 10, 2014 letter addressed the relevant issue, which was the Claimant's disqualification as a B&B Foreman. Mr. Bolduc was allowed to displace the B&B Foreman because in addition to passing the test, he possessed other requisite Foreman qualifications. The Claimant did not and therefore was not disparately treated. Because the Claimant was not qualified, he has no right to compensation and no continuing claim. Carrier claim MW-15-22 (Third Division Award 42887) concerns a related previous claim that should not have resulted in the progression of the instant claim and does not change the facts.

The on-property Award No. 23 of Public Law Board No. 5418 establishes the Carrier's right to determine the qualifications for the B&B Foreman position. The February 4 and 10, 2014 letters delivered to the Claimant informing him of his disqualification as a B&B Foreman do not remove or diminish that right. Passing the B&B test is a threshold qualification for the B&B Foreman position. If the test had not been passed, the existence or non-existence of additional qualifications would have been irrelevant, but once the test was passed, the Carrier had the right to assess additional qualifications that it deemed critical. The record contains three undated memos detailing observations of the Claimant's prior work as a B&B Foreman that the Carrier found lacking. The decision not to allow the Claimant to fill the B&B Foreman position despite passing the test on March 10, 2015 is viewed by this Board as a reasonable exercise of authority. Unlike awards provided by the Organization, the Carrier's support for the decision to fill the B&B Foreman position with the qualified employee junior to the Claimant was established during the on-property progression of the claim. The Board finds that the Organization and the Claimant were made aware of the reasons for the Carrier's decision. The operant facts convince the Board that the Claimant's seniority rights were not violated.

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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 10th day of January 2018.