

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43012  
Docket No. MW-42185  
18-3-NRAB-00003-130135**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (former Missouri  
(Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier improperly disqualified and removed Foreman L. Lacey from his position on System Rail Gang 9112 on September 24, 2011 (System File UP278WF11/1563244 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Lacey shall have his disqualification as a foreman removed and he shall be paid ‘,,, at the System Rail foreman’s rate of pay for all hours straight time and all overtime hours worked, from September 24, 2011 and continuing. . . .’**

**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.

This claim protests the disqualification of the Claimant from the Foreman position on September 24, 2011. The record on the property reveals that on that date, the Claimant was instructed by his supervisor to lay rail on half of the curve in order to allow an Amtrak train to pass before laying the second half of the curve, but failed to follow that instruction, causing an hour and twenty minute delay to the train. The Carrier's April 2, 2012 denial attaches a written statement from the Director of Track Maintenance explaining that the Claimant had been previously coached and counseled by his supervisor concerning ongoing performance issues including his failure to properly plan his assigned work and overstaying his permit time. None of the facts presented were rebutted by the Claimant or the Organization.

The Carrier argues that properly planning work, overseeing his gang's work and productivity, and following instructions are qualities necessary for the proper performance of the Foreman position, and that it reasonably determined that the Claimant did not have the necessary fitness and ability to perform the Foreman job, supporting his disqualification. It notes that under the Agreement, a disqualification is removed after 6 months, and that the Claimant was back in the Foreman position on April 13, 2012. The Organization asserts that the Claimant was only following his supervisor's instructions on September 24, 2011, which resulted in the train delay, and that he should not have been disqualified.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of establishing that the Claimant's September 24, 2011 disqualification was arbitrary or an abuse of discretion. Rather, the Carrier supported its action with direct evidence of the reasons for the disqualification, which were not rebutted by the Organization. There is no showing that this disqualification was not a proper exercise of management's prerogative to determine fitness and ability.

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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 29th day of March 2018.