

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43015
Docket No. MW-42238
18-3-NRAB-00003-130212**

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 -
PARTIES TO DISPUTE: (IBT Rail Conference
(
(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 J. Huitt from his position on Gang 9234 by letter dated October 30, 2011 (System File UP286WF11/1564733 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant J. Huitt shall have said disqualification removed from his record and he shall be compensated for all lost straight time and overtime hours at the applicable foreman's rate of pay beginning on October 30, 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 employe or employes involved in this dispute are respectively carrier and employe 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 October 30, 2011 for substandard performance. The Claimant was in the position of Quality Foreman of Gang 9234, and, as the statement of the Supervisor establishes, was in charge of reviewing and assuring the quality of the work left behind. During the work period prior to the Claimant's disqualification, it was found that the gang left wide gauge that was not repaired, drill bits and a broken plate when they moved on to another area. The Claimant's statement indicates that he was not in charge of the gang at the time and was told by the other Foreman to leave the wide gauge for repair at the beginning of the next work cycle, but that they did not get to it at that time. Other employee statements were proffered in support of this assertion.

The Carrier argues that it has the management prerogative to determine fitness and ability and set performance standards, and that, despite being coached and counselled in the past, the quality of work left behind by the Claimant's gang was very poor. It notes that there is no dispute that these issues remained on the track after the Claimant's gang moved on, and the Claimant was responsible for the gang's work product at the time. The Carrier contends that when the Organization challenges its determination concerning fitness and ability, it must prove, by competent evidence, that the employee has the requisite fitness and ability and that its determination was arbitrary, citing Third Division Award 21615. It asserts that it failed to do so in this case.

The Organization maintains that the Claimant was not placed in charge of the gang when his supervisor was out on vacation, and that the other Foreman who was in charge, instructed the gang to move on prior to making the necessary repairs, and that they would return to this area at the beginning of the next work cycle. It contends that the Claimant was not responsible for the substandard performance found by the Track Inspector and MTM, and that it was unfair for the Carrier to disqualify him for what occurred when he was not in charge.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of establishing that the Claimant's October 30, 2011 disqualification was arbitrary or an abuse of discretion. The supervisor's statement sets out clearly that each Foreman on the gang has specific responsibilities, and that the Claimant, as Quality Foreman, is responsible for the poor quality of the track and work area left behind by his gang, regardless of the Track Foreman's concurrent responsibility. The Carrier asserted that the Claimant had been counselled prior to this occurrence about his substandard performance. The Organization was unable to prove otherwise. There is no showing that this disqualification was not a proper exercise of management's prerogative to determine fitness and ability. Under this Agreement, the Claimant's disqualification was removed after six months, and he was returned to the Foreman position on June 20, 2013.

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.