

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43020  
Docket No. MW-42369  
18-3-NRAB-00003-130380**

**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 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 disqualified Mr. C. Ragsdale as a track system foreman and as a track system assistant foreman on May 30, 2012 (System File UP308WF12/1575519 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Ragsdale shall now have the aforesaid track system foreman and the track system assistant disqualification removed from his record."**

**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 both the Track System Foreman and Assistant Foreman positions on May 30, 2012. The basis for the disqualifications was his substandard performance by not inspecting and making the necessary adjustments in order to adhere to track gauge standards on 3 consecutive days. The Carrier's September 6, 2012, 2012 denial attaches a written statement from the Manager of Track Programs explaining that the Claimant was coached after the first two days and sent back to correct the deficiencies, but that he did not improve. In its November 26, 2012 denial, the Carrier attached an email exchange between the Vice Chairman and Labor Relations concerning the Claimant's previous disqualification from the Foreman position and inability to qualify for the Assistant Foreman position, and the fact that the skill set the Carrier determined that he did not possess was necessary for both positions on a system gang. None of the facts presented were rebutted by the Claimant or the Organization.

The Carrier argues that the knowledge of FRA track gauge standards and the ability to inspect track to ensure that it meets those standards, are qualities necessary for the proper performance of both the Foreman and Assistant Foreman positions, and that it reasonably determined that the Claimant did not have the necessary fitness and ability to perform those jobs, supporting his disqualification. It notes that under the Agreement, a disqualification is removed after 6 months, which occurred with the Claimant on December 7, 2012. The Organization asserts that the Claimant's disqualification from two different positions at the time he working as a Foreman is an abuse of discretion, discriminatory and excessive, since Rule 19 speaks of disqualification from the position he was in at the time.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of establishing that the Claimant's May 30, 2012 disqualification from both the Foreman and Assistant Foreman positions was arbitrary or an abuse of discretion. Rather, the Carrier supported its action with direct evidence of the reasons for the disqualification, and the fact that the skill set it determined that the Claimant lacked was necessary for both positions, which was 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,

or was arbitrary. See, e.g. Third Division Award 36957. Further, the remedy requested by the Organization in this claim occurred with the reinstatement of the Claimant's qualifications by operation of the Agreement, on December 7, 2012.

**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.