

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43544  
Docket No. MW-43087  
19-3-NRAB-00003-150272**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 Mr. C. Williams as a track foreman by letter dated April 25, 2014 (System File UP509JF14/1605147 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Williams shall be compensated ‘... for eight (8) hours each day, for the difference in pay between Maintenance of Way, Assistant Track Foreman and Track Foreman and any and all overtime acquired by the Foreman currently assigned to Gang 2545, to begin on April 25, 2014, through and including on a continuous basis until this matter is settled and the removal of his unjust 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 Claimant had established and held seniority within the Carrier's Maintenance of Way Department. At the time of the dispute, the Claimant was assigned as a track foreman. The Carrier disqualified him from the position on April 25, 2014. Manager of Track Maintenance Keagan Niles provided numerous reasons for the Claimant's disqualification, stating that the Claimant had been trained and coached many times, but had not tried to improve. Niles' statement concludes, "Mr. Williams is unfit and unsafe as a foreman."

The Organization filed a claim on May 5, 2014, stating that the Claimant was unjustly disqualified from the position. Further, the Organization contended that the Carrier denied the Claimant his right to a Fair and Impartial Investigation, as the disqualification should have been treated as discipline. On May 27, 2014, the Carrier denied the claim, stating that the Carrier retained the right to determine qualifications of employees. The parties were unable to resolve the claim on-property and it is now properly before this Board for final adjudication.

The Organization contends that the Carrier's disqualification of the Claimant was improper, because the Claimant was never afforded the required due process under the Agreement. Further, the Organization contends that the Carrier's disqualification of the Claimant was arbitrary because the decision was based on a single statement that contains unspecified grounds. The Organization contends that the Carrier failed to refute the Claimant's statement showing that Niles' criticisms were unfounded and retaliatory and intended to punish the Claimant for declining weekend work.

The Carrier contends that it has the managerial prerogative to determine fitness and ability of its forces, and that such decisions are subject to review only as to whether the determination was arbitrary. Further, the Carrier contends that once it has established that the employee does not possess the requisite fitness and ability to



perform the job, the burden shifts to the Organization to show that the Carrier's determination was arbitrary.

The Carrier contends that the Organization has failed to produce any evidence showing that it incorrectly determined that the Claimant failed to adequately and safely perform his duties and that he failed to demonstrate interest in performing them.

Numerous Boards have found that the Carrier has the managerial right to judge fitness and ability. Third Division Award 36957. When the Organization challenges the Carrier's judgment, the burden falls on the Organization to establish proof of the employee's fitness and ability. Third Division Award 21615. Here, the Claimant's statement admitted that the errors occurred, but asserted that the errors were not his fault. Additionally, the Organization has alleged, without proof, that the Carrier was unfairly judging the Claimant because he could no longer work weekends without advanced notice. The Organization has failed to show that the Carrier's determination was arbitrary.

**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 March 2019.