

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43613  
Docket No. MW-44591  
19-3-NRAB-00003-180009**

**The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier failed to bulletin an I&R track inspector position at the Beech Grove Maintenance Facility and instead assigned Supervisor B. Roche to perform Maintenance of Way Department work (inspect track) at the Beech Grove Maintenance Facility in Beech Grove, Indiana beginning on April 27, 2016 and continuing (Carrier’s File BMW-609 NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Shipley shall now ‘\*\*\* be compensated at the I&R Inspectors overtime rate of pay for any and all hours worked by Supervisor Roche beginning on April 27, 2016 and continue until such time the Claimant is allowed to fill the position of I&R Inspector. We further request the Carrier advertise and award the position of I&R Inspector at Beech Grove Maintenance Facility, in Beech Grove, IN.’”**

**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.

On June 6, 2016, the Organization filed a claim asserting that the Carrier violated Rules 1 Scope, 5 Seniority, 8 Bulletin, Assignment and Displacement and 11 Overtime of the Off-Corridor ("OC") Agreement when it assigned the duties of a track inspector to a non-agreement supervisor. The Organization maintains that the Claimant, Machine Operator Thomas Shipley, should have been permitted to fill the open track inspector position.

The Carrier denied the claim on August 3, 2016, asserting, among other things, that the Claimant did not have a "MW-1000 Class 1-5" certification and therefore, was not qualified to perform track inspections. It maintains that federal regulations and the Carrier's rules contain specific qualifying criteria that must be attained by anyone competent to perform track inspections. The Carrier argues that the Claimant lacks the requisite certifications and therefore is ineligible to perform the track inspections.

The on-property record indicates that the Carrier denied the subsequent appeals from the Organization and issued its final decision on March 3, 2017. The Organization rejected the Carrier's decision and on August 31, 2017, filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

**Relevant Contract Language**

**"RULE 5 - SENIORITY**

4. Assignment to positions covered by this Agreement will be based on qualifications and seniority; qualifications being sufficient, seniority will govern."

The Board finds that the claim submitted is defective and must be dismissed. The clear and unambiguous language of Rule 5, paragraph (4) requires an employee to be qualified before being assigned a position covered by the Agreement. The documentary evidence establishes that the Claimant did not possess the requisite certifications and therefore, is not qualified to fill a track inspector position.

Contrary to the Organization's valiant argument, there is no support in the record for the premise that the Claimant was qualified to perform track inspections due to his 20 years of service and his ability to repair tracks defects. The Carrier has the discretion to set qualification criteria where not limited by the Agreement and required by federal regulations. The record establishes that such criteria includes the "MW-1000 Class 1-5" certification, which the Claimant does not possess. As such, the Claimant was not aggrieved and has no standing to submit the claim as presented.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Organization has not provided sufficient evidence that the Carrier violated the Agreement.

**AWARD**

Claim dismissed.

**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 17th day of May 2019.