

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44067  
Docket No. MW-43401  
20-3-NRAB-00003-190581**

**The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.**

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

**PARTIES TO DISPUTE: (**

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

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier unnecessarily and unjustly disqualified and removed Flagging Foreman J. Currie from his position on Gang 1637 effective on December 1, 2014 and continuing (System File UP676BT14/1619239 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Currie shall be compensated for ‘... the difference in pay between a foreman (27.75 per hour) and a trackman (24.71 per hour) due to the fact that when Mr. Currie was unjustly disqualified, he was required to take a trackman’s position at a lesser rate of pay. This claim should also include any and all overtime worked by gang 1637 during this continuing period as well as additional expenses incurred by the Claimant because of the Carrier violation.’”**

**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 began Flagging Foreman duties on October 15, 2014. As a Flagging Foreman, the Claimant was charged with protection and on-track safety. In the instant dispute, the Organization alleges the Carrier improperly disqualified and removed the Claimant from his Flagging Foreman position on December 1, 2014. The matter progressed in the normal fashion and now is before the Board for resolution.

In summary, the Organization argues a) the Carrier's action in disqualifying the Claimant was arbitrary, unjust, and unwarranted, b) the Carrier failed to establish any foundation of fact to support its decision to disqualify the Claimant, and c) the Carrier's defenses are without substance or merit.

In summary, the Carrier argues a) the Agreement was not violated when the Claimant was disqualified, and b) the Organization failed to prove that the Carrier's decision to disqualify the Claimant was arbitrary, capricious, or unreasonable.

Numerous Boards have found that the Carrier has the managerial right to judge fitness and ability, provided that such determinations and findings are not arbitrary. [See Third Division Award 36957] The Board has carefully reviewed the record here and cannot find the Carrier was arbitrary in its decision to disqualify the Claimant from his Flagging Foreman position.

Here, the record revealed several individuals raised multiple concerns regarding the Claimant's performance, and indicated the Claimant lacked geographical knowledge of the area to which he was assigned. The record also indicated the Claimant had interpersonal issues with others. The Claimant was aware of his Manager's concern regarding his performance and had been warned that he would be disqualified if his performance did not improve. Prior to his disqualification, the Claimant's Manager enrolled the Claimant in safety-related training (SIP/SAP class) to assist the Claimant in knowledge of rules and his responsibilities as a Flagging Foreman. Given these factors, the Board cannot find that the Carrier was arbitrary in its decision to disqualify the Claimant. As a result, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

**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 11<sup>th</sup> day of August 2020.