

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44073
Docket No. MW-43546
20-3-NRAB-00003-190599**

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

**(Brotherhood of Maintenance of Way Employes 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 improperly and unjustly disqualified and removed Foreman J. Racey from his position on Gang #4174 effective on February 11, 2015 (System File UP5110JF15/1622723 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Racey shall have said disqualification removed from his record and he shall be compensated for ‘... ten (10) hours each day for the difference in pay between Tie gang Foreman and Track Man and any and all overtime acquired by the employee working the position of foreman, beginning on February 11, 2015, to include all holidays, through and including on a continuous basis until this Matter is settled ***’.”**

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.

In the instant dispute, the Organization alleges the Carrier violated the Agreement when it improperly disqualified the Claimant from his Tie Gang Foreman position on February 11, 2015.

By letter dated February 11, 2015, the Claimant received the following letter from his supervisor regarding the Claimant's disqualification:

"...This letter is to inform you that as of February 11th, 2015 you are hereby disqualified from the Foreman position on Gang 4174.

You were unable to demonstrate and provide the necessary supervision and attention to safely perform the functions of your duties. We will assist you in getting you enrolled in a Track Warrant class and our 213.7 FRA training as well to help you learn this position; however at this time you are unable to perform the duties necessary.

Therefore, you should arrange to exercise your seniority as allowed in accordance with the BMWE Agreement..."

In summary, the Organization argues that the Carrier's decision to disqualify the Claimant was arbitrary, unjust, unwarranted, and cannot stand.

In summary, the Carrier argues a) the Carrier has the managerial right to determine the fitness, ability, and qualifications of its employees, subject only to limited review by the Board as to whether the Carrier was arbitrary in its determination, b) the Organization has failed to provide any evidence to dispute the Carrier's basis for disqualifying the Claimant, and c) the Organization failed to satisfy its burden of proof.

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 Tie Gang Foreman position. The Claimant's supervisor provided a detailed statement detailing the various reasons for the Claimant's disqualification, which

included but were not limited to the following: Failure to lock a switch, setting his trainer's hy-rail on track improperly, a general lack of desire in learning the position, informal coaching, etc. The record is void any probative evidence showing the Carrier was arbitrary in its decision to disqualify the Claimant. As a result, the claim is 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 11th day of August 2020.