

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44077
Docket No. MW-43624
20-3-NRAB-00003-190603**

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 disqualification of Messrs. T. Williams, M. Wallace and R. Williams from their track welder positions on March 24, 2015 was unjust and in violation of the Agreement (System File UP515JF15/1625006 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. Williams, M. Wallace and R. Williams shall have the track welder disqualification removed from their records and compensated for the difference in pay between track welders and the classification that the Claimants worked in and all overtime hours worked by the employees that worked the track welders positions Claimants were disqualified from beginning March 24, 2015 and continuing.”**

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 Claimants from their Track Welder positions on March 24, 2015.

By letter dated March 24, 2015, the Claimants received the following letter from Manager Whitfield regarding their disqualification:

“...This letter is to inform you that you have been disqualified from the position of Welder, account failure to show the necessary ability required to perform duties in an efficient manner.

In accordance with the Agreement between the Brotherhood of Maintenance of Way Employees and the Union Pacific Railroad, (former Missouri Pacific Railroad) you should arrange to exercise your seniority in accordance with your Agreement...”

In summary, the Organization argues a) the Claimants’ disqualification constituted disciplinary action and the Claimants were never provided an investigatory hearing regarding the disqualification, and b) the Carrier failed to prove the allegations placed against the Claimants leading to their disqualification.

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) disqualification is not considered discipline, c) the Organization has failed to provide any evidence to dispute the Carrier’s basis for disqualifying the Claimants, and d) 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 Claimants from their Track Welder positions. Here, there is no dispute that the Claimants shot a weld that subsequently broke under a train only four hours after the weld was made.

Although the Organization maintains the broken weld was not the Claimants' fault, the Claimants performed the weld repair and there was no probative evidence to support the contention that the resulting failure of the weld was someone else's mistake. 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 11th day of August 2020.