

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44232
Docket No. MW-43379
20-3-NRAB-00003-200452**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier upheld the disqualification of Track Inspector T. Doiel following a disqualification hearing held on September 22, 2014 (System File C-14-D090-2/10-14-0399 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the disqualification of Claimant T. Doiel shall be overturned, he shall be returned to his track inspector position and his record shall be cleared of any mention of said 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 Tier III training program for track inspectors was created to ensure that track inspectors had adequate knowledge of certain types of track conditions and defects, and to emphasize certain core competencies. As of April 1, 2015, employees were required to undergo Tier III training and certification before being awarded a Track Inspector position. During the year prior to implementation, employees could take the training and become certified. If an employee failed the test, (s)he could retake it, but if (s)he failed it a second time, a one-year waiting period was imposed before retesting.

On April 4, 2014, the Claimant, a qualified Track Inspector, took the Tier III test and failed, scoring 69. He retook the test on April 22 and again failed, with a score of 71. As a result, he had to wait a year before making another attempt. This inability to meet the new job requirement resulted in the Claimant's disqualification from his position.

The Carrier points to Rule 42, asserting the claim was not filed properly and therefore cannot be processed. This rule states as follows:

“Rule 42. TIME LIMIT ON CLAIMS

- A. All claims or grievance must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same.....”

Despite properly following procedure in other cases, the Organization's Vice-General Chairman submitted the claim here involved to General Manager Janssen Thompson. The Carrier contends that since this is not a discipline case, it should have been presented to Director Maintenance Support Melodi Tripp.

The Organization points out that Thompson did not object or voice any problem, but responded to the claim. The Carrier counters that it has long been settled that employee disqualifications are not a form of discipline. It references Third Division Award 35713 wherein the Board clarifies this essential distinction, stating in pertinent part:

“The record shows that the claim here was not presented to the proper official of the Carrier at any time during the handling on the property. Therefore, the Board cannot consider the substantive issue in the claim.”

We find this precedent provides guidance in the instant matter. Accordingly, we find this claim was not properly filed and therefore cannot be processed. The claim was presented to an officer of the Company who was not authorized to receive it. The fact that the officer in question responded to the claim has no bearing on the actual language of Rule 42. We find the claim was not properly filed and cannot be processed.

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 23rd day of October 2020.