

Public Law Board 7163

Award No. 16

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

Case 16; NRAB Case: 05-3-288

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to provide an unjust treatment for Mr. T. Atkins as requested on July 9, 2004 in connection with his improper disqualification “from an assistant foreman time keeper position on System Production Gang 5XT3 on February 6, 2004 [System FileD21900604/12(04-0687) CSX].

(2) As a consequence of the violation referred to in Part (1) above, Claimant T. Atkins shall now ‘... be considered qualified as a Time Keeper, be paid any difference in pay between his pay and that of the 5XT3 Time Keeper, including overtime, beginning February 6, 2004 and continuing until this claim is allowed, and be allowed to fill the Time Keeper position. If the Claimant did not already possess Assistant Foreman seniority he should also have his seniority posted from the date of the bulletin for the position in question.’”

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

Claimant was awarded the position of Assistant Production Foreman – Timekeeper on System Production Gang 5XT3 effective on January 22, 2004. The Director Production and Programs sent Claimant a letter dated January 22, 2004, discussing the evaluation of Claimant’s timekeeping skills and suggestions for improving skills for qualification. Attached was a summary of timekeeping duties with comments on Claimant’s progress.

The Director Production and Programs sent Claimant a letter dated January 26, 2004, that discussed Claimant's progress and suggested that Claimant take advantage of online tutorials that were available.

The Supervisor of Teams sent Claimant a letter dated February 6, 2004, stating:

This will confirm your failure to qualify as Timekeeper on System Tie Team 5XT# effective at close of business on Wednesday, February 4, 2004. Your effort and enthusiasm were good, however your development of the skills needed for the position were very slow and not near the level needed for the position. I wish you the best in your future endeavors and look forward to your continued contributions to CSX.

The General Chairmen sent the Senior Director of Labor Relations a letter dated February 13, 2004, noting Claimant's disqualification and stating:

Nothing in [Carrier's] letter indicates that [Claimant] was advised of his rights as provided under the Agreement, or Side Letter 2 dated September 28, 1993. [Carrier] should have advised [Claimant] that he had the right to appeal this decision to the Oversight Committee, or that he could waive this right and make a displacement in line with his seniority.

Please advise the Engineering managers to include this type of correspondence in the future.

A response at your earliest convenience would be appreciated.

There is no response from the Carrier contained in the submissions. The General Chairmen sent the Senior Director of Labor Relations a letter dated March 8, 2004, noting Claimant's disqualification and stating in pertinent part:

This makes reference to my letter to you dated February 13, 1994 concerning the disqualification of [Claimant] . . .

I requested that you advise the engineering managers to include the employees options in any future disqualification letters and that you respond to me concerning this request. No response has been received. Therefore, I would like to discuss these procedures at the next meeting of the oversight Committee.

[Claimant] has subsequently been advised of his right to appeal his disqualifications to the Oversight Committee and wishes to appeal. I am hereby listing his appeal for the next meeting of the Oversight Committee.

The General Chairmen sent the Senior Director of Labor Relations a letter dated July 9, 2004, noting:

Please consider this as a request for an unjust treatment hearing as provided under Side Letter #32 . . . dated March 27, 2001. This hearing is requested on behalf of [Claimant] . . .

The Organization properly listed [Claimant's] case before the Oversight Committee as required by the September 28, 1993 Side-Letter #2 of the SPG Agreement. The Oversight Committee met on June 30, 2004 and failed to render a decision on [Claimant's] request. Having complied with Side Letter #2. [Claimant] is entitled to the procedures as provided under Side-Letter #32 . . . which states in pertaining part as follows:

Otherwise, terms and conditions on SPGs, such as discipline, etc., will be subject to terms and condition of the CSXT Sustem Agreement with BMW.

Therefore, please advise when [Claimant] will be provided an unjust treatment hearing.

The General Chairmen sent the Senior Director of Labor Relations a letter dated August 5, 2004, noting that Carrier failed to provide an unjust treatment hearing as requested and requesting that the Claimant be considered as qualified for the position. Further, the Organization claimed the difference between his current pay and Timekeeper pay.

The Carrier responded in a letter dated September 14, 2004, and denied that Claimant received inadequate training for the Assistant Foreman Timekeeper position. The Carrier also stated that the Organization's presentation to the SPG Oversight Committee was improper because that Committee exists for:

disputes concerning whether an applicant possesses the requisite skills to perform the job [and] those employees who feel their applications for consideration for assignment to System Production Gang Assistant Foreman Timekeeper position were improperly rejected will have their cases reviewed by the Oversight Committee. [Claimant] did not have his application rejected. He was judged to have met his requisite skills test and was awarded the position subject to qualification. After a fair and reasonable training period. . . with his failure to qualify. . . Carrier avers the requirements of Section 2, paragraph F of the SPG have been met in good faith.

The Organization's arguments were summarized by the General Chairman in his letter dated December 13, 2004, wherein he stated that the provisions of Side Letter 2 regarding the Oversight Committee should have controlled the inquiry into Claimant's disqualification. The Oversight Committee had not met for years and only met to consider Claimant's matter. When the Committee did not render a decision, the time restrictions for the Oversight Committee began to run. Accordingly, Claimant's request for an oversight hearing was timely filed and Claimant

should receive a penalty payment.. The Organization also points to Third Division Award 29605 in support.

The Carrier responds that the Agreement was not violated because the request for an Unjust Treatment Hearing was not timely filed. Further, the disqualification for the position was a reasonable Carrier decision and should not be disturbed.

After a review of the record, and the Award citations contained therein, the Board finds that the Organization's position is persuasive. Pursuant to Side-Letter #2, the Organization applied to the Oversight Committee for review of Claimant's disqualification. The Oversight Committee did not render a decision when it met to discuss the matter. Only after the Organization sought an Unjust Treatment hearing did the Carrier assert that the Oversight Committee was the improper forum for hearing the matter involving Claimant's disqualification.

Third Division Award 29605 is instructive where it states:

There is no support on the record before the Board for restoring Claimant to a foreman's position . . . Accordingly, that portion of the Organization's claim must be denied. The language of Rule 39, Section 2, does clearly establish Claimant's right to request and be granted an unjust treatment hearing in connection with his removal from the foreman's position on January 17, 1990. Carrier's unilateral determination that such a request was frivolous or without merit does not absolve it from complying with the clear language of the agreement between the Parties. Thus, if Claimant still desires an unjust treatment hearing regarding his removal from a position . . ., carrier shall comply with that request within thirty (30) days of receipt of this award.

Here, the Carrier did not raise the issue of improper forum during the handling of the claim - either prior to the meeting of the Oversight Committee or at the meeting. Carrier cannot simply ignore the request for an Oversight Committee review of a matter and then claim that an Unjust Treatment request was untimely.

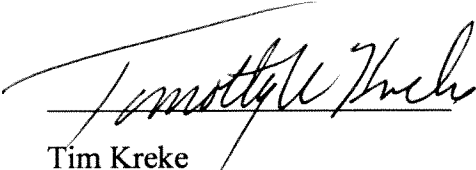
The request for the Unjust Treatment hearing was made within ten days of the Oversight Committee meeting that did not address the disqualification. Accordingly, if Claimant still desires an unjust treatment hearing regarding his removal from the position of Assistant Foreman Timekeeper, the Carrier shall comply with that request within thirty (30) days of receipt of this award. As there has been no Unjust Treatment hearing, there is no award of backpay or transfer to an Assistant Foreman Timekeeper as part of this award.

Award:


Claim sustained in part and denied in part.

Brian Clauss

Brian Clauss
Chairman and Neutral Member


Tim Kreke
BMW

Organization Member


Robert A. Paszta
CSX Transportation, Inc.

Carrier Member

Dated this 26th day of January 2012