

PUBLIC LAW BOARD NO. 2960

AWARD NO. 107
CASE NO. 149

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned employees junior in seniority to bulletined foreman's positions instead of assigning Assistant Foreman M.P. Cunningham. (Organization File 3T-4925; Carrier File 81-85-11).
- (2) Claimant M. P. Cunningham shall now be given a July 30, 1984 foreman's seniority date and compensated from that date all wage loss suffered.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

It should be noted at the outset that the Claimant in this case was also the Claimant in Case No. 150, Award No. 104. In that award, the Board upheld the Carrier's decision to discipline the

Claimant in connection with an incident which occurred on May 18, 1984. The discipline notice in connection with this incident was issued June 15, 1984 and read as follows:

"Thirty (30) days actual suspension and disqualified as a foreman. Effective June 18, 1984."

It is noted that he retained his assistant foreman rights.

The instant claim had its genesis in July, 1984, when the Claimant bid on two foreman positions. The Carrier however, awarded the positions to employees who had seniority dates as assistant foremen later than the Claimant. The claim protests this fact.

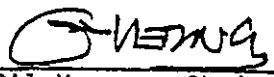
After reviewing the record, the Board must first state that there is nothing which, per se, precludes the Claimant from bidding on foreman vacancies even though he was previously disqualified. Moreover, the fact he was disqualified in June, 1984, does not necessarily or automatically disqualify him forever.

On the other hand, the Carrier is entitled to, when assessing whether the Claimant is qualified pursuant to Rule 16 H, to take into consideration, and give great weight to the fact that the Claimant, a short time before, was guilty of a serious violation of an important safety rule.

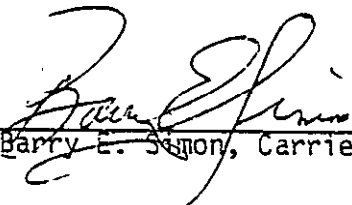
In doing so, under these circumstances, the Board cannot conclude the Carrier acted unreasonably when determining the Claimant was not qualified for this particular position.

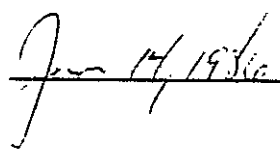
AWARD

The Claim is denied.


Gil Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated:  17/19/66