

PUBLIC LAW BOARD NO. 2960

AWARD NO. 147

CASE NO. 224

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- "1. The disqualification of Welder J. Mayes for allegedly failing to properly perform his duties was without just and sufficient cause, unwarranted and prejudicial (Organization File 4SW-1165 D; Carrier File 81-87-67).
- "2. Claimant J. Mayes shall be allowed the remedy prescribed in Rule 19 (d)."

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.

On December 18, 1986, the Carrier directed the following notice to the Claimant:

"You will arrange to appear for hearing as indicated below:

PLACE: Roadmaster's Office
1937 Hull Avenue
Des Moines, Iowa

DATE: Monday, December 22, 1986

TIME: 10:00 A.M.

CHARGE: Your failure to properly perform your duties when you did not make any boutet welds as instructed on the afternoon of Thursday, December 11, 1986.

"You may be accompanied by one or more persons of your own choosing subject to the applicable rules of the Brotherhood of Maintenance of Way Schedule, and you may, if you so desire, produce witnesses in your own behalf without expense to Transportation Company."

The investigation was ultimately held on January 9, 1987.

Subsequent to the investigation the Claimant was disqualified as a welder.

There is no dispute that the Claimant failed to make any welds on the afternoon in question. The Claimant testified that he had not made a weld because he understood that his supervisor wanted him to wait until he returned so he could set his HY-RAIL off at the crossing.

The supervisor denied giving any such instructions. In fact, the supervisor said he had work south of the crossing which would not have interfered with the weld. Even more important, in the opinion of the Board, is the fact that there were a number of ways for the supervisor to bypass the weld even if he did want to work north of the crossing since this was double track territory. Thus, the record doesn't contain any meaningful mitigation for the Claimant's failure to accomplish any welding on the day in question.

In view of these facts, it is also our opinion that disqualification isn't inappropriate for an employee who is in charge of a helper and essentially unsupervised.

AWARD

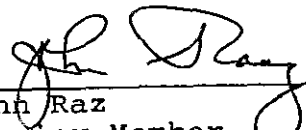
The Claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



John Raz
Carrier Member

Dated: 4-30-90