

PUBLIC LAW BOARD NO. 4021

Award No. 34
Case No. 30

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees

and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to disqualify Western Lines Welder G. H. Salazar from his position of Welder, effective July 18, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Salazar to his former position, and compensate him for the difference in rates between Welder and Welder Helper from July 19, 1985, forward.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant was employed by the Carrier as a Welder, and failed to pass the required examination on the Carrier's Rules. According to the record, Claimant was permitted to take the test on three separate occasions, and when he failed the third time, was disqualified from holding positions as either a Welder or a Welder Foreman.

Claimant was verbally advised of his disqualification, by Welding Supervisor Bostick, on July 16, 1985, to be effective July 19, 1985. Claimant reported to a Welder Helper position on July 22, 1985, and has occupied that position since that time.

A written Notice of disqualification, dated July 25, 1985, was sent to the Claimant via Certified Mail, with a copy to the Organization. Although the Organization confirms that it received a copy, it asserts that Claimant did not receive the letter, because it was sent to the incorrect address. Therefore, the union argues, Claimant was not given proper Notice of the disqualification, and was denied his right to request an Investigation. It urges, here, that such failure invalidates the procedure, and

that Claimant should be restored to a Welder's position with pay for wages lost.

The Carrier argues that the address to which the letter was mailed, was the last known address on file at either the Division or General Offices. Further, Carrier argues that notwithstanding the absence of the letter, Claimant knew of his disqualification, and demonstrated that knowledge by reporting to and occupying the Welder Helper position. Carrier points out that no assertion has been made that Claimant is qualified, or that the tests were in error. The sole issue in contention is the Certified letter.

The Organization points out that Claimant was receiving his paychecks at an address in Fort Worth, Texas, so the Carrier knew of his new address. The Carrier asserts that many of its employees receive paychecks at addresses other than their homes, and that the proper address for correspondence such as this is the address filed by the employee at the Division and General Offices. There is no contention that the Claimant filed any address at these offices, other than that to which the letter was sent.

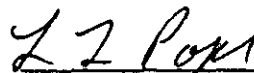
Numerous awards have held that a Carrier may rely upon a Certified letter, sent to the employees last address on file. The fact that Claimant's paychecks were being sent to a new address indicates that he had given that address to someone, but it does not show that he had changed his address with the Division and General Office.

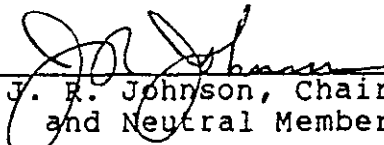
In this case, the question is moot. The Claimant clearly was aware of his disqualification, and admits to being given verbal notice. He was not denied the right to request an Investigation, due to the missing letter. In fact, the letter did not mention a right to Investigation at all. In this case, it would have made no difference if he had received the letter.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated:  January 20, 1987

