

PUBLIC LAW BOARD NO. 5418

Case No. 23 Award No. 23

PARTIES Brotherhood of Maintenance of Way Employees
to - and -
DISPUTE: Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"This is a grievance on behalf of T. G. Smith, currently a Trackman, for violation of his rights under the current agreement between the BMW and ST. We feel that the Carrier has violated his rights under Article 4-Seniority, Article 7-Qualifications for Positions and Article 26-Discipline."

FINDINGS: The dispute came about as a result of the Carrier removing (date unknown) the claimant's name from the FRA Certified Maintenance Foreman list.

The Organization asserts that the disqualification took place without formal notification to the claimant. They also assert that the claimant was disciplined without a fair and impartial hearing pursuant to Article 26-Discipline. Further, they state that the Carrier has never given the claimant any valid reason for their actions and failed to give him any explanation or warning regarding this matter.

The Carrier, on the other hand, asserts that the claimant was not disciplined. They state that it has sole responsibility and authority to determine the qualifications of their employees. In this case, they state that the reason the claimant's name was removed from the list in question, was based on his failure to maintain FRA certification, and that their action was proper and in compliance with Article 7.3 of the Agreement which is as follows:

"7.3 Disqualification of employees for failure to maintain required licenses, rules qualifications, and/or FRA certifications, or for medical reasons will not be considered discipline."

The Carrier also asserts that the claimant has not taken upon himself to requalify pursuant to Article 7.2 of the Agreement which is quoted as follows:

"7.2 In the event employees are required to give a reasonable practical demonstration of their qualifications for a position, the Company must give uniform job related tests based on job related criteria in order to ascertain initial qualifications for positions. The General Chairman or his designee may be present when such tests are given."

We agree with the Carrier that they have sole responsibility and authority to determine qualifications and, in light of the language of Article 7.3 supra, we also agree that the action taken by the Carrier in this case did not constitute discipline, and there was no violation of the Agreement. However, in making this determination, we find the administrative handling of the issue involved in this case was poor to say the least. Albeit, Article 7.3 does not require written notification of disqualification; the Carrier should have, as common courtesy, notified the claimant and advised him of his shortcomings.

Accordingly, we direct the Carrier to arrange to have the claimant meet with the Chief Engineer for the purpose of giving him the specifics regarding his shortcomings. Thereafter, it will be incumbent upon the claimant to avail himself of the

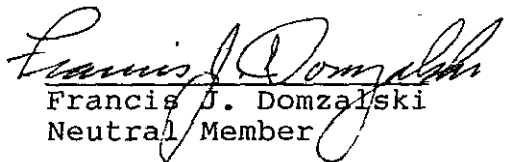
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provisions of Article 7.2, if he desires to be reinstated on the FRA list.

AWARD: As specified in the Findings.


Francis J. Domzalski
Neutral Member


T. W. Mc Nulty
Carrier Member


B. A. Winter
Organization Member

Dated: 12-18-98