

Award No. 5
Case No. 5

PUBLIC LAW BOARD NO. 5696

PARTIES Burlington Northern Railroad Company
TO
DISPUTE:

AND

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) That the Claimant, Mr. J.D. McMillan, was improperly disqualified from the position of mechanic on December 15, 1993.
- (2) As a result of improper disqualification, Mr. McMillan shall be reinstated to his position of mechanic and made whole for all pay lost, and all other rights remain intact as a result of the Carrier's improper acts.

FINDINGS

Upon the whole record the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

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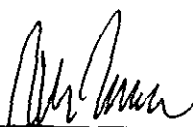
The record indicates that Claimant herein was awarded the position of Traveling Mechanic based on Bulletin TM-21 on June 4, 1993. He was disqualified in December, so he was in the position for approximately six months. Upon his disqualification, he exercised his seniority and was assigned as a Section Gang Foreman in Oklahoma City. His seniority date was March of 1992.

The record indicates that this case is closely allied factually to that described in Award No. 4 of this Board. In this instance, the Claimant also failed to pass the two tests which were given to him with respect to hydraulic symbols and electrical symbols. Specifically, on the electrical symbols test, Mr. McMillan got three correct answers out of 24, or 12%. Carrier considers 50% to be acceptable, although mechanics who were skilled who took the test received scores in the 85-95% range. With respect to the second test dealing with symbols from hydraulic systems, Mr. McMillan scored 10 out of 36 questions correctly for a 27% result. Again, 50% was the minimum that was considered to be acceptable from Carrier's standpoint. Claimant here was also given three problems with the hydraulics and pneumatics and electrical schematics, and asked for his method for troubleshooting the problems. According to Carrier, he was unable to provide logical methods for troubleshooting in those cases.

Carrier indicates that McMillan, in this instance, in the six month period involved, had two experienced mechanics working with him for a substantial period of time. In addition, it is also clear from the testimony adduced at the hearing that Claimant here was not only sent to Carrier's Overland Technical Training Center in Johnson County Community College, but also attended a program provided by one of the vendors dealing with its equipment. Furthermore, as a distinction between this dispute and that dealt with in the earlier Award, Claimant here, according to the testimony of Carrier, was given notification that he was going to be tested with respect to the electrical and hydraulic systems prior to receiving the test. According to Carrier, he was notified of the test when he put his signature to the bulletin, which indicated that the qualifications would be met. His appallingly low test results, in view of the fact that he knew the qualifications had to be met, were sufficient as the Board views it to support Carrier's decision to disqualify him. In this instance, it appears that there was no basis for protest of the disqualification, even though perhaps a more formal notification of the planned test would be appropriate. For the reasons indicated, the disqualification will stand.

AWARD

Carrier properly disqualified Claimant.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
April 27, 1995

