

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION  
IBT RAIL CONFERENCE**

**and**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 107**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

1. The Carrier's decision to disqualify Claimant J. Jelks as a welder helper for his alleged unsatisfactory performance as a welder helper on Gang ICBA A01 is entirely improper, unjust, unwarranted, excessive, and in direct violation of the Agreement (System File C110610/IC-BMWED-2011-00072).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant J. Jelks ' . . . be reinstated to the Welder Helper's position immediately, made whole in accordance with Rule 33, paragraph (i) of the agreement between the Canadian National-Illinois Central Railroad and its employees represented by the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters and that all reference of this disqualification be stricken from his record."

**FINDINGS:**

By notice dated March 4, 2011, the Claimant was informed that his performance as a welder helper had not been satisfactory and that he was being disqualified as a welder helper. The Organization subsequently filed a request for an unjust-treatment hearing on behalf of the Claimant, which was held on May 18, 2011. The Organization thereafter appealed the Claimant's disqualification as a welder helper, and the Carrier denied the appeal.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to render a decision after the unjust-treatment hearing, because no probative evidence was developed at that hearing to substantiate the Carrier's decision

to disqualify the Claimant as a welder helper, and because the Carrier's decision to disqualify the Claimant as a welder helper cannot stand because it was unfounded and unreasonable. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof, and because the Claimant properly was disqualified from his position.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it disqualified the Claimant as a welder helper for his alleged unsatisfactory performance. Therefore, the claim must be denied.

The record in this case shows that the Claimant was observed performing his duties improperly on five separate occasions between February 2, 2011, and March 4, 2011. He was disqualified as a welder helper effective immediately after the fifth occasion. The record reveals that the Carrier performed a PMRC audit on the Claimant and he failed it as well.

It is fundamental that the Carrier has a right to determine the qualifications of its employees. The Carrier cannot act unreasonably in making a determination. However, in this case, a review of the record makes it clear that the Carrier acted reasonably when it determined that the Claimant was incapable of safely and properly performing his position as a welder helper.

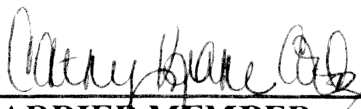
It is fundamental that the Organization bears the burden of proof in cases of this

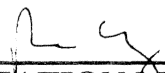
kind. The Organization has failed to meet that burden in this case. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**  
  
DATED: 7/31/13

  
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**ORGANIZATION MEMBER**  
  
DATED: 7/31/13