

PUBLIC LAW BOARD NO. 6249

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER ST. LOUIS**
 SOUTHWESTERN RAILWAY COMPANY)

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly disqualified Mr. M. Armstrong from his assigned foreman's position under date of March 13, 1995 (System File MW-95-30-CB/BMW 95-299).

2. As a consequence of the aforesaid violation, the disqualification shall be rescinded, all reference thereto shall be removed from Mr. M. Armstrong's record, he shall be reinstated to his production foreman's position and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

This claim protests the Carrier's disqualification of Claimant from his production gang foreman's position. An unjust treatment hearing did not change the action. As a result of the disqualification,

Claimant was permitted to exercise seniority as a foreman.

The claim will be denied.

First, the Organization argues that "[t]he Carrier's decision to disqualify the Claimant amounted to discipline without benefit of a formal investigation as contemplated by Article 14" We disagree.

Claimant's disqualification was not discipline. *See Third Division Award 28802* ("Such a disqualification should not be deemed by the Board to be disciplinary, requiring a hearing, unless there is evidence that the Carrier intended it to punish the employee rather than to simply remove him from a position in which he has been unsatisfactory.").

While Claimant was suspended for five days on February 2, 1995, because employees under his supervision were observed not using personal protective equipment, there is no evidence that this particular dis-

qualification was imposed as punishment. Therefore, Claimant was not disciplined.

Second, the standard of review in these kinds of cases is set forth in *Third Division Award 24063*:

In disputes such as this, it is well established that once Carrier has presented a rationale for its conclusion that an employee is not qualified for a particular position, it is incumbent on Petitioner to present evidence to establish Claimant's ability In the absence of a showing that Carrier's conclusion was arbitrary or capricious and did not properly consider Claimant's ability, the claim must fail.

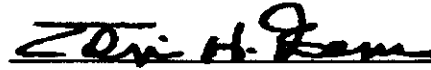
Division Engineer D. F. Brown explained the result of the unjust treatment hearing:

... It was my decision ... that Mr. Armstrong would probably be a foreman on a small division gang but shouldn't be a foreman on a gang that had lots of men to supervise. He had no idea of where his slow orders were to be placed and had been found more than one wide gage behind the tie gang. He has trouble supervising several men. Sometimes Foremans [sic] on division gangs where they supervise 2 or 3 men do well and then on production gangs doesn't [sic] have the depth. Mr. Armstrong can exercise his seniority as foreman on the division at anytime, but at this time we feel he shouldn't be on production, larger gangs ...

While perhaps debatable, the evidence is not sufficient to show that the disqualification determination was arbitrary or capricious.

AWARD

Claim denied.

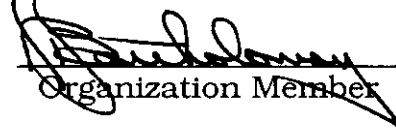


Edwin H. Benn

Neutral Member



Carrier Member



Organization Member

Dated: 6-21-02