

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 14

Statement of Claim: Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when CSXT disqualified employee M.C. Orr from a Midwest North Service Lane Work Territory Bridge Team 6PP# Bridge & Facilities Mechanic position on October 15, 2002.
2. As a consequence of the above-stated violation, the Organization requests that Mr. Orr be reinstated with his B&B seniority and be made whole for all lost wages and benefits, plus be permitted to displace a junior employee working on the Midwest Region B&B department.

Statement of Facts:

Claimant M. C. Orr was hired by CSXT on May 23, 2002 as a basic trackman. On September 17, 2002, he voluntarily bid and was awarded Position 6PP#-074 Bridge and Facilities Mechanic position on a Midwest North Service Lane Work Territory Bridge Team. He was afforded almost thirty days in the position to qualify under the provisions of Rule 3.

By letter dated October 15, 2002, Claimant was given notice that he had failed to qualify as a bridge mechanic because of concerns about his safety when he was working at excessive heights on bridges with power-operated tools. Thereafter, Claimant requested an unjust treatment hearing, as set forth in Side Letter No. 32, dated March 27, 2002.

At the hearing, which was held on November 1, 2002, Bridge Supervisor Jim Stephens testified that Claimant did not work safely or efficiently while on the bridges. The Carrier determined that no evidence was presented to find that Claimant's disqualification was arbitrary or unreasonable.

By letter dated November 26, 2002, the Organization appealed the Carrier's decision. The Organization contended that Regional Engineer Structures H. L. Davidson had not rendered a decision and that there was insufficient evidence to find that Claimant was not working safely. The claim was discussed in conference on January 14, 2003, and the Carrier confirmed its earlier decision. In a rebuttal letter dated March 3, 2003, the Organization reiterated its position and also asserted that Claimant's disqualification was due to a lack of proper training by management.

Findings:

Claimant was afforded a fair hearing during which he had full opportunity to present evidence in support of his claim that he was treated unjustly. Based upon a careful review of the Record, however, this Board is compelled to conclude that Claimant's disqualification was neither arbitrary nor unreasonable.

Supervisor Stephens testified credibly about the safety issues associated with Claimant's performance. He said that Claimant moved tentatively, was hesitant to walk on the bridge, and was reluctant to use power tools at excessive heights. While the Organization argued that Claimant had not received sufficient training on his position in order to qualify, Claimant conceded during his testimony that he had been trained on the

use of fall protection. It is also clear in the Record that Supervisor Stephens had worked with Claimant on a daily basis to provide the proper guidance and instruction. Claimant was given enough time to qualify, but his performance did not meet the Carrier's standards in regard to safety and efficiency. Therefore, the Carrier was within its rights in disqualifying him.

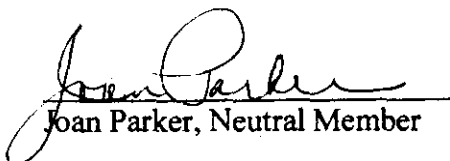
Numerous arbitration awards have recognized that a carrier has the discretion to determine an employee's fitness and ability for a position. As was held in Third Division Award No. 35808 (Benn):

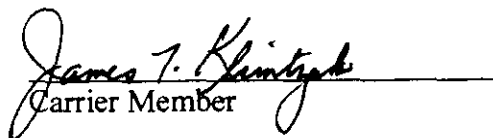
Qualification, fitness and ability to perform a job are determinations to be made by the Carrier, subject only to limited review by the Board as to whether the Carrier was arbitrary in its determination.

In the instant case, the Organization did not rebut with sufficient evidence the testimony that Claimant lacked the aptitude and skills to perform safely the tasks required of his position. Undisputedly, following Claimant's disqualification, he was permitted to exercise his seniority for other positions under the terms of the labor Agreement. The Board also notes that if and when Claimant attains greater experience and confidence, he may try again to qualify for a Bridge and Facilities Mechanic position.

Award

The claim is denied.


Joan Parker, Neutral Member


Carrier Member

Dated: February 17, 2004


Organization Member

Dated: 2-17-04