

**PUBLIC LAW BOARD NO. 7008**

**PARTIES TO THE DISPUTE:**

BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES DIVISION AFFILIATED  
WITH THE TEAMSTERS RAIL CONFERENCE

- and -

CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

In accordance with the provisions of Rule 25, Section 3, of the June 1, 1999 Agreement, the following will serve as our appeal of the discipline assessed to BMW employee M.A. Kilburn ID#\*\*\*\*\*, as a result of the hearing held on August 25, 2005.

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For the reasons stated, as well as our numerous objections at the hearing, it is respectfully [requested] (sic) that the charge letter and all matters relative thereto be removed from Mr. Kilburn's personal file and he be returned to the Rail Welding Plant as a Welder Operator, and he be made whole for all losses suffered as a result of the Carrier's actions.

**OPINION OF THE BOARD:**

M.A. Kilburn ("Claimant") was hired by Carrier's Engineering Department on July 8, 2002. The record demonstrates that Claimant was awarded the position of Welder on the 5X55 Welding Team at the Nashville Welding Plant in Nashville, TN. As required by the Agreement, Claimant was permitted the requisite sixty (60) day training period to become proficient on the newly awarded Welder's position. However, after sixty-one (61) days on the position, Carrier determined that the Claimant was "unable to master welding", and, on July 28, 2005, Claimant received confirmation of his disqualification effective at the close of business on the same date. In the letter the Claimant was instructed to attend an August 11, 2005 "show cause hearing" relative to his disqualification.

Following one (1) postponement, the hearing convened on August 25, 2005, with both Claimant and his representative in attendance. By letter dated September 14, 2005, the Claimant's disqualification as a Welder Operator was confirmed

In an appeal protesting the Claimant's disqualification, the Organization alleged that the disqualification was: "*Discipline assessed to BMW employee Kilburn...*". Specifically, the Vice Chairman alleged that: "*In accordance with Appendix F(10), Mr. Kilburn was not given reasonable time or training in which to become a qualified Welder Operator*". In its denial of the appeal, Carrier noted that disqualification is "*separate and distinct from disciplinary procedures*", further arguing that : "*All proper procedures were followed and the disqualification was demonstrated to be made with just cause*".

The record demonstrates that the Claimant was provided the required sixty (60) day qualification as provided for under Appendix F, Item 10 of the June 1, 1999 BMW/CSXT System Agreement. In that connection, Claimant's Welding Instructor, R.P. Roper, stated, unequivocally, that Claimant was "not meeting the qualifications to become a welder". Mr. Roper went on to state that in his fifteen (15) years of experience, he "never" based his disqualification on production, however, Mr. Roper maintained that: "*Claimant Kilburn was unable to produce welds properly to add to the efficiency of the welding plant*". Specifically, the Welding Instructor reported that the Claimant was on the welding machine, by himself, for approximately twenty-one (21) days and was "*Unable to meet the performance expectations of a welder...*".

Manager of Welding Plants Vaught testified that the Claimant: "*...had 18 re-welds during the last nine days prior to his disqualification, which averages 2 per day...*". Finally, Foreman Norcross (who has been at the Nashville Welding Plant for approximately 21 years) assisted the

Claimant's training by making adjustments on the machine and checking re-welds. According to Foreman Norcross, the Claimant's performance was "sub-par" because of "*the quality of the re-welds, along with the off-sets, highs, lows, forgetting to send the prep grinder out, etc...*". Mr. Norcross went on to assert that the Claimant was given "more than enough chance" to qualify, but that the Claimant was "unable to retain the information".. Specifically, Foreman Norcross stated that he would explain the proper way to "do things" to the Claimant, however Claimant would "*do the same wrong thing over and over again*".

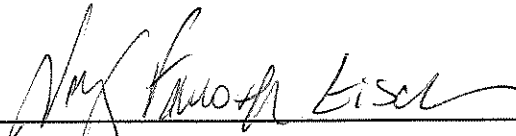
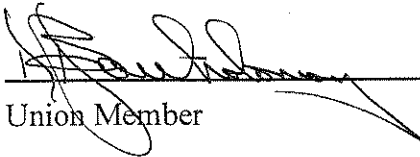

The record demonstrates that all of Claimant's "due process" rights as provided for by the Agreement were protected throughout the proceedings and the hearing was conducted in a fair and impartial manner. Turning to the merits of the issue, the Claimant was awarded the position of Welder on the 5X55 Welding Team. In accordance with Appendix F(10), Mr. Kilburn was given the requisite sixty (60) days to qualify for the position, but was not successful in those efforts. In that connection, the record supports Carrier's contention that Claimant was given a "fair opportunity" to qualify for the Welder position. According to Manager of Welding Plants M. Vaught's undisputed testimony, he took the Claimant aside to "encourage" him because he seemed "so nervous". Specifically, Mr. Vaught told the Claimant: "*I want you to be part of our team; we need you, it is a very important job you are doing. I don't want you to be nervous, I don't want you to lose sleep or anything about the job*". In that connection, Mr. Vaught stated that Mr. Norcross was present for part of the above quoted "pep talk" and offered the "same type of encouragement".

It has long been held in this industry that a Carrier possesses the right set reasonable standards that an employee must meet to be placed on a job. Further, Carrier has the right to make determinations about employee qualifications to ensure that work is performed both safely and

properly. Based on the record evidence, including the hearing transcript, there is substantial evidence to support the Carrier's finding of disqualification. Therefore, this claim must be denied.

AWARD

Claim denied.

  
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Nancy Faircloth Eischen, Chairman  
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Union Member  
\_\_\_\_\_  
Company Member