

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CASE:

Walter T. Keels (“the Claimant”), whose hire date with the Carrier is January 19, 2009, bid for the permanent position of Basic Track Foreman on Force 5TFC and was assigned to the job on November 3, 2009. Under the collective bargaining agreement he had 30 days to qualify for the position. At the conclusion of the 30-day qualifying period, J. E. Saladin Jr., Roadmaster East Tampa, notified the Claimant in writing that he “failed to demonstrate sufficient aptitude to meet the qualifying requirement of a Foreman” and that he would “not be entitled to obtain seniority as a Foreman. . . .” The letter informed the Claimant that he was “required to return to [his] former position, or exercise seniority.”

The Organization, by letter dated December 9, 2009, requested “an Unjust Treatment Hearing as prescribed by Side Letter 32 and as provided in Rule 25 of the June 1, 1999 Agreement between CSX and the BMW” After a postponement, the hearing was held at the Engineer Track Division office in Tampa, Florida, on January 27, 2010.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are

respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the hearing Roadmaster Saladin testified that his method of training a foreman is to “put them with the experienced foremen, track inspectors, machine operators if need be,” observe the work of the employee, and on the 29th or 30th day have a “walk through” with the employee. Roadmaster Saladin continued, “If he shows me that he’s trying to learn and trying to do what they’re suppose[d] to be doing . . . , then we talk about it and give them a chance.” Mr. Saladin testified that prior to December 2nd he went by and observed the work of the Claimant and the others he worked with four or five times. This would have been, he explained, while they were working, or afterwards to see what they had done.

Roadmaster Saladin testified that on December 2, 2009, he was with the Claimant at the Rockport yard inspecting switches at 10 miles-per-hour track. On a couple of switches, the Roadmaster stated, he asked the Claimant if he needed to install ties or if the ties were good for 10 MPH track. According to the Roadmaster, the Claimant said that he would change several of the ties that were in the turnouts although, in the Roadmaster’s opinion, they did not have to be changed because they were good enough for 10 MPH track.

In addition, on December 2nd, the Roadmaster testified, he went with the Claimant to a derailment site in the same location, and he asked the Claimant how he would repair the track. “[H]e couldn’t give me a definitive answer as to how he would replace the rail and the ties and what needed to be done to repair the derailment at that time,” the

Roadmaster stated. According to the Roadmaster, the Claimant “was just going to come off joints and not take all the bent rail out, which needed to come out[;] and . . . he wanted to put in all the ties, [but it] didn’t need all the ties, just needed some to make it for a class 1.” The Claimant, the Roadmaster clarified, in addition to not taking out all the bent rail, wanted to put in 20 or 30 ties where the track needed only 8 to 10.

On December 3, 2009, the Roadmaster testified, he took the Claimant to look at a switch at Druid that was gapped, and the Claimant had difficulty figuring out how to adjust the switch. In attempting to adjust the switch, according to the Roadmaster, the Claimant put the shims on the wrong side. In addition, the Roadmaster stated, the switch points had to be grounded, which the Claimant failed to do before putting in the shims. Further, the Roadmaster testified, the Claimant “tried to use brute force to get the handle down.” The Claimant corrected the installation of the shims, the Roadmaster testified, after he asked the Claimant if he put them on the right side. It should have taken four to five minutes to inspect the turnout, the Roadmaster stated, but it took the Claimant 20 or 25 minutes.

According to the Roadmaster, previously, a couple of times, he had the Claimant work with the Roadmaster’s inspectors for training in how to adjust switches, check gauge, look at tie defects, and do regular inspections. In addition to going with the track inspectors, the Roadmaster stated, before submitting his bid for foreman, the Claimant attended the REDI Center school for track inspection. At no time, the Roadmaster testified, did the Claimant come to him and ask questions or ask questions of him while he (the Roadmaster) was on the job site.

The Organization representative asked the Roadmaster if the Claimant told him on December 2nd that he would need to use his FRA book and his MWI book to inspect

track. The Roadmaster answered yes. The Organization representative then asked the Roadmaster if he felt that the Claimant should know everything about inspecting track without using those books. The Roadmaster answered, "No, but you should know the basics." Asked for examples, the Roadmaster testified that you should know that class 1 track, the lowest class with a maximum speed of 10 MPH, needs 6 ties within 39 feet and that the gauge can't be over 58 inches according to FRA regulations.

The Claimant testified that when he inspects track he starts from the switch point and works his way back to the hill of the frog and briefly checks pins, bolts, gaps, and gauge. On December 3rd, the Claimant stated, he tried to adjust the switch but couldn't. He informed the Roadmaster that he would need to take the switch out of service, the Claimant testified, and that it looked like the switch needed a welder. The reason he believed that the switch had to be taken out of service, the Claimant stated, was because he could not fix the switch himself – he could not find the problem.

The Claimant testified that he is a safe worker and that he uses good judgment in working for CSX and putting up track and inspecting switches. The reason that he requested an unjust treatment hearing through the Organization, the Claimant stated, was that he felt that not qualifying him without a reason was unjust. When the Roadmaster gave him the letter stating that he had failed to qualify as foreman, the Claimant testified, the Roadmaster said that the Claimant was too slow. In the Claimant's opinion, that was not a good enough reason for failing to qualify him.

During his 30-day trial period, according to the Claimant, he did everything that was asked of him as a foreman and an employee of CSX. "I'm not saying I'm qualified to do them all," the Claimant testified, "but those that I don't know I do know how to call and ask questions." He felt, the Claimant stated, that during his training period the

Roadmaster would take time out to talk to him about how he was doing, but that did not happen.

The hearing officer asked the Claimant what skills he had that qualified him for the foreman position. He stated, "I can go out and work safely and sufficiently to replace rail; check gauge; make sure that I check my gauge properly checking ties; movement, plate movement, and rail movement and slack movement; and I believe I could fix the problem without any problems." Asked if he had the ability to obtain track time, the Claimant stated that he did not receive training in that task and that he believed that after qualifying as foreman he would be shown how to do that task. The Roadmaster testified that "eventually" a foreman would have to learn how to get track time.

The Roadmaster testified that being slow is not the reason that he gave the Claimant for failing to qualify him. He discussed with the Claimant, the Roadmaster stated, how he (the Claimant) was inspecting and how he tried to correct a switch. He might have told the Claimant that he was too slow, the Roadmaster testified, but it would have been in the sense that when checking gauge he was checking every tie, which made him too slow. One does not need to check every tie when walking the turnout to check gauge, the Roadmaster asserted.

He explained to the Claimant, the Roadmaster stated, that if he looks down the track and he sees that the track is going straight, he does not have to check each tie because it is not going to change that drastically in one tie. The Roadmaster acknowledged that on December 3rd the Claimant said that he felt that the switch needed to be taken out of service but stated that this was after the Claimant had put the shims in wrong and he (the Roadmaster) explained to him how he had to look behind the switch points to determine if there was any roll and if a welder needed to come.

The Organization representative asked the Roadmaster what is needed to qualify as a foreman. He stated that you have to know how to find defects and then repair them. A track inspector, the Roadmaster testified, will report to him if he finds a piece of wide gauge somewhere or ties that need to be replaced, and he (the Roadmaster) will tell the foreman which milepost to go to, or where in the yard, and the foreman would be expected to go out and replace the ties or change the rail. Asked whether the Claimant had demonstrated the ability to inspect track, find defects, and adjust switches, the Roadmaster answered, "A little, yes." However, the Roadmaster added, in order to qualify as a foreman you need more than a little knowledge before you can do remedial work on a main line or even in the yard at the standards required for that class of track.

Questioned whether the MWI or FRA book would help the Claimant in qualifying as a foreman, the Roadmaster stated, "You shouldn't have to look at the FRA book and the MWI and/or the Field Manual for every little thing that you are sent out there to do." The Organization representative asked the Roadmaster if he was "basically saying that Mr. Keels failed to qualify because he didn't know how to inspect track or inspect switches?" He answered, "Basically, yes."

After the close of the hearing, by letter dated February 12, 2010, the Division Engineer notified the Claimant that "after a thorough review of the transcript of the hearing," he determined that the Claimant's "failure to qualify was justified in that [he] failed to show sufficient aptitude to perform the responsibilities of the Foreman position. Testimony from Roadmaster Saladin, as well as yourself," the letter continued, "validates that you were unable to fulfill the requirements of the assignment after given the opportunity to demonstrate your skills and ability within the prescribed time limits of the Agreement."

In his closing statement, the Claimant declared, "I feel with a complete working crew, I am fully capable of doing a foreman's duties safely and efficiently without anyone getting hurt." In its closing statement, the Organization asserted that based on the Claimant's testimony, he demonstrated that he was qualified as a foreman and that with training and adequate time he would probably make a very good foreman.

This is not a disciplinary hearing, but an unjust treatment hearing in which the burden of proof rests with the Claimant. The Claimant has not carried his burden to show that the Carrier did not have valid grounds for failing to qualify him as a Basic Track Foreman on Force 5TFC. It is not disputed that on December 2, 2009, in a "walk through" with the Roadmaster, the Claimant told the Roadmaster that certain ties had to be changed, which, in the Roadmaster's judgment, did not have to be changed because they were good enough for 10 MPH track. In addition, on the same date, the Claimant showed deficient knowledge in how to handle a derailment in that he did not identify all of the bent rail which needed to come out and wanted to put in more ties than were necessary.

The next day, December 3rd, when the Roadmaster continued his practical test of the Claimant's abilities, the Claimant showed more serious deficiencies. He showed lack of knowledge of how to adjust a switch that was gapped. Thus he put the shims on the wrong side and was unaware that the switch points had to be grounded. In addition, he attempted to use brute force to move the switch handle down. Further, he spent 20 minutes on a switch that should have taken four or five minutes to inspect.

The Claimant's defense was that he could get everything right if permitted to consult the FRA and MWI manuals and to call and ask questions when in doubt. The Roadmaster, however, was rightly of the opinion that a foreman cannot be continuously

looking at a manual or asking questions but must be self-sufficient at least in the basics. It was not unreasonable for the Roadmaster to expect the Claimant to know how to inspect the switch without consulting a manual and not to spend 20 minutes on a task that should be done in five.

This Board is not saying that the Claimant, who had less than a year of service at the time he was found not to be qualified to be foreman, will never make a foreman. With additional experience he may well turn out to be a good or an excellent foreman at some future time. The evidence, however, does not establish that the Roadmaster improperly failed to qualify him as foreman as of December 3, 2009. The claim will therefore be denied.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
May 10, 2010