

PUBLIC LAW BOARD NO. 2960

AWARD NO. 27

CASE NO. 15

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The disqualification of Foreman E. Randolph, Jr., from that position of track foreman was without just and sufficient cause and unwarranted. (Carrier's File 81-24-87)

(2) Foreman E. Randolph, Jr., shall have his foreman's seniority restored and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

The basic facts in this case are not in dispute. On May 5, 1980, the Claimant bid for and was assigned to the Maintenance Gang Foreman position. However, because of an injury, he did not assume the position until June 9, 1980. On June 10, 1980, the Claimant was informed verbally by Roadmaster R. R. Ruppert that he was disqualified from the Foreman's position. On June 12, 1980, Mr. Ruppert confirmed this disqualification

in a letter to his superiors and to the General Chairman. The letter read as follows:

"This is to inform you that on June 10, 1980, I disqualified Mr. E. Randolph from his Foreman position in Kansas City as a Maintenance Gang Foreman.

The main reason for disqualification is Mr. Randolph's temperament; his unwillingness to cooperate makes it very difficult for him to produce an adequate level of production.

His attitude breeds discontent among fellow workers to the point of constant friction, further reducing production in the gangs around him."

A hearing regarding the disqualification was requested and held on June 25, 1980.

It was the decision of the Assistant Division Manager--Engineering to uphold Mr. Ruppert's decision. The letter indicated in pertinent part, "I support the position that due to your attitude and lack of experience you are not qualified to be a Track Foreman."

It is the position of the Organization that the Claimant was prejudged by Roadmaster Ruppert. They believe the Claimant was disqualified on the basis of unproven charges and was denied the opportunity to qualify per Rule 17 of the Agreement. It is obvious that Roadmaster Ruppert had no intention of allowing the Claimant an opportunity to qualify and in fact disqualified him before he reported to the Foreman position. This is apparent from the letter that Mr. Ruppert wrote on June 9, 1980, asking that Mr. Randolph's position be abolished and rebulletined. The testimony presented at the hearing, according to the Organization, does not support the allegations made by Roadmaster Ruppert in his letter of disqualification. The Organization does not believe that it would be possible to determine that "his unwillingness to cooperate makes it very difficult for him to produce an adequate level of production" and "his attitude breeds discontent among fellow workers to the point of constant friction, further reducing

production in the gangs around him." Such assertions are impossible to support when consideration is given to the fact that the Claimant's crew consisted of three new employees and that they did not even accompany him on the day in question. It is obvious to the Organization that the Claimant's disqualification was not based on his work performance but based on Mr. Ruppert's past experiences with Mr. Randolph. They believe that Mr. Randolph was prejudged. They do not believe that one day was a reasonable time in which to qualify. The Carrier acted in an arbitrary manner by not allowing the Claimant the prescribed time to qualify.

The Carrier believes that the disqualification of the Claimant was justified. Roadmaster Ruppert's reasons for disqualifying the Claimant were twofold. Mr. Ruppert noted that the Claimant would have only 60 days to qualify for his position, but he had been absent for more than 30 days of this qualification period due to an injury. Second, as a result of his phone conversation with the Claimant and based on prior knowledge he had of him, the Roadmaster determined that the Claimant's attitude was not suitable for supervising employees. The Carrier also notes that when given the opportunity to, the Claimant offered no evidence at the hearing that he was qualified to perform the job of Gang Foreman. It is the position of the Carrier that the Claimant was properly removed from the position of Gang Foreman. It was evident from his behavior that the Claimant lacked supervisory skills and failed to furnish any support that he was qualified as a Gang Foreman. Under the circumstances, the Carrier believes that disqualification was justified.

Particularly pertinent to this dispute is the following portion of Rule 17:

"Employees accepting promotion and failing to qualify within sixty (60) calendar days, may return to their former position."

It is the Board's interpretation of Rule 17 that the Carrier must allow an employee accepting promotion a reasonable period of time to qualify. In this case, it is the conclusion of the Board that the Carrier did not grant E. Randolph a reasonable period of time to qualify. One day is not a reasonable time in light of the facts and circumstances in this case. If the Claimant's potential to become a satisfactory foreman was so tenuous that his incapacibilities would have been manifest in one day, it seems unlikely that the Carrier would have determined that his fitness was sufficient in the first place. It is noted that under Rule 17, it is the Carrier's prerogative to determine the fitness and ability of employees. If what Mr. Ruppert indicated in his letter was true, it seems that it would have been prudent for the Carrier to have determined that the Claimant's fitness and ability were not sufficient for the position. However, it is clear that they had determined that his fitness and his ability were sufficient by virtue of the fact that they had assigned him to the position in the first place. Once an employee is assigned to a position, it is the Carrier's obligation to give that employee a reasonable period of time in which to qualify.

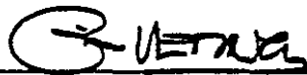
The Organization in their statement of claim was seeking that the Claimant have his foreman seniority rights restored. However, the Board is reluctant to restore the Claimant's seniority rights as a foreman because he has yet to demonstrate that he is qualified for the position. It would be unreasonable and unfair to force the Carrier to employ Mr. Randolph as a foreman without him first being qualified, just as it would be unfair to deny the Claimant the right to become a foreman without an opportunity to demonstrate his qualifications.

Thus, it is the Board's determination that the most reasonable remedy in this case is to provisionally award the Claimant his foreman seniority date pursuant to Rule 4(b), as of the date of his assignment on the bulletined Maintenance Gang Foreman position. The Claimant will then be allowed to bid on any subsequent Foreman vacancies on the basis of that date.

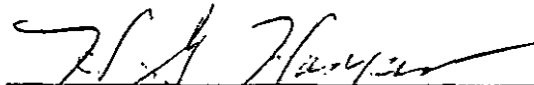
Subsequent to his assignment to the position, the Carrier is directed to give the employe a reasonable time in which to qualify. If it is the Carrier's determination that the Claimant is qualified, he will be awarded his Foreman seniority date on a permanent basis and will be paid for the differential in wages between the Foreman's position and the positions that he held during the pendency of this dispute. If it is determined that he is not qualified, consistent with Rule 4(b), he will not acquire his provisional Foreman's seniority rate.

AWARD

Claim sustained to the extent indicated in the opinion.



Gil Vernon, Chairman


J. D. Crawford, Carrier Member
H. G. Harper, Employe Member

Date: Feb. 15, 1933