

Public Law Board No. 3794

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Seaboard System Railroad

STATEMENT  
OF  
CLAIM:

1. The disqualification of J. P. Frieslander as Track Foreman was improper and without just and sufficient cause.

2: Therefore

a. J. P. Frieslander's personal record shall be cleared of all reference to said disqualification;

b. He shall be allowed a track foreman's seniority date as of April 18, 1983 and he shall be allowed to exercise properly such seniority; and

c. He shall be compensated for all wage loss suffered.

FINDINGS:

After serving as a laborer and apprentice foreman, claimant was assigned, subject to his ability to qualify, to a bulletined position of section foreman.

At the time of his assignment as foreman, he was informed in a letter from Division Engineer Freeman that Mr.

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Freeman and any of his staff as well as the Roadmaster "will be happy to assist you in any way possible." The letter went on to specify the minimum requirements that would to be met and pointed out that the assignment "is subject to your ability to qualify."

Twenty-five days after his assignment as foreman, claimant was advised by Roadmaster Ferri that his inexperience and lack of basic foreman skills make it essential that he be disqualified from foreman rank until such experience is established. On the following day, claimant was formally disqualified.

At the hearing that was held in this matter, Mr. Ferri testified as to specific ways in which claimant failed to meet minimum requirements. According to Mr. Ferri, claimant did not prepare adequately for his work or properly pull track, did not know the spiking or anchor pattern, did not properly install stand ties, fill out forms correctly or consult with the Roadmaster regarding techniques.

Foreman Mestas corroborated the Roadmaster's testimony in several respects.

Rule 12 of the applicable Agreement provides as follows in pertinent part:

Section 1: A promotion is an advancement from a lower rank to a higher rank.

Section 2: Promotion shall be based on ability and seniority; seniority shall prevail if ability is sufficient, of which the Management shall be the judge, subject to appeal as provided for in Rule 39. In promotion, the provisions of Rule 6, Section 2, shall apply.

. . . . .

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Section 4: Employees accepting promotion will be given a fair chance to demonstrate their ability to meet requirements of the position; if failing to so qualify within sixty (60) calendar days, the position will be declared vacant, and the employee may return to his former rank in accordance with Rule 13, Section 3.

. . . . ."

It is well established that where, by agreement, promotions are based on ability and seniority, Management will be allowed considerable latitude in determining whether the employee involved is qualified for the promotion. This is all the more true here, where the Agreement expressly provides that "Management shall be the judge," subject to appeal, of ability. We are in accord with the oft repeated principle that once the Carrier has determined, under such a provision, that the employee lacks the necessary ability, the employee must show by persuasive proof that the Carrier's decision to set aside his promotion was arbitrary or prompted by some improper consideration.

The present record does not show that Management acted improperly in disqualifying claimant. The fact that he was not given a full 60 days to qualify is not controlling. Rule 12 Section 4 does not require a 60-day trial period; its provision is that the promoted employee must qualify "within" 60 days. Carrier has the option under that Rule to remove an employee within the 60-day period.

We are satisfied from a careful review of this record that Carrier's action was not without reasonable cause. Accordingly, no compensation for wage loss is due in this case.

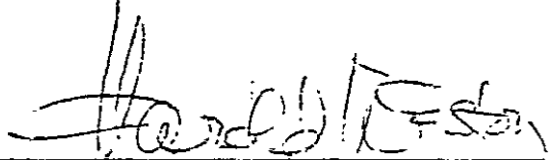
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However, claimant's seniority should be restored as of April 18, 1983 for bidding purposes only, for a track foreman position.

AWARD:

Claimant's seniority should be restored for bidding purposes only as of April 18, 1983 for a track foreman position. All other items of the claim are denied. To be effective within 30 days.

Adopted at Jacksonville, Florida, Dec. 19, 1985.



Harold M. Weston, Chairman

  
Carrier Member  
Employee Member