

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees Division
of the International Brotherhood of Teamsters
and
BNSF Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when claimant, G. F. Alonso, was disqualified as a Welder A effective January 24, 2005 for allegedly violating Maintenance of Way Operating Rules 1.3 and 1.4.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate claimant's Welder A seniority date of 04/15/02, return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from his personal record, and make him whole for all time lost account of this incident. [Carrier File No. 14-05-0046. Organization File No.60-13D3-051.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant in this case, Mr. Guillermo P. Alonso, was first employed by the Carrier on August 30, 1999, as a Trackman in its Maintenance of Way Department. According to the record, he acquired seniority as a Welder Class A on April 15, 2002. Welders are paid a higher rate of pay and expected to demonstrate greater skills than Trackmen. The Parties' Collective Bargaining Agreement provides for separate groups reflecting differing skills, and employees may establish seniority in one or more groups corresponding to their skills, training, and other qualifications.

On February 17, 2005, the Carrier's Division Engineer sent a notice of investigation to the Claimant, to be held February 24, 2005, which reads, in part:

Attend investigation . . . for the purpose of ascertaining the facts and determining your responsibility if any, in connection with your possible violation of Rules 1.3

and 1.4 of the Maintenance of Way Operating Rules, . . . concerning your alleged failure to comply with instructions from Welding Supervisor and BNSF Track Welding Rules and Procedures Manual while welding frog at MP 502.6 on the Panhandle Subdivision on January 24, 2005 and frog at MP 526.1 on the Panhandle Subdivision on January 27, 2005, while working as Welder at Pampa, TX., on the Kansas Division.

By agreement of the Parties, the investigation was held on February 25, 2005. The Claimant was represented by the Organization's Vice General Chairman. The Claimant offered testimony on his own behalf. Other witnesses were called to testify by the Carrier.

Welding Supervisor Alfred L. Franklin stated that he conducts periodic field audits on all the Welders in his territory, to determine their qualifications and compliance with rules and procedures. They are required to score 95 or above to be considered fully qualified. He stated that he conducted such an audit on the Claimant on January 24, 2005. He offered in evidence the field audit on welding a manganese frog, on which the Claimant attained a score of 67.0. The audit indicates total failure in the fields of finish grinding and slotting, and substantial deficiencies in the welding process. He offered the following testimony with respect to the audit on January 24:

I went over a lot of Mr. Alonso deficiencies and, and told him we're going to have to, to correct all these deficiencies so we can score 95 and above. In detail, some of the deficiencies, the welder in, he did not have the instruction manuals and parts book to his equipment at the work site. We asked numerous of questions concerning, at the work site how far the equipment can be placed away from track. The welding door on the welding machine was missing. Cables, make sure that cables are dug underneath the track to run your cables. Make sure that they understand how to measure gage face and vertical, excuse me, gage face and vertical wear limits on, on switch points. We talked about his welding, make sure that he had the correct arc length, the correct travel speed, the correct rod angle, the correct depth of penetration, the correct width and height of the beads, starting and stopping on the gage corners; tying up the adjacent bead one quarter of an inch, and also concerning the finished grinding process. [Answer No. 17.]

Mr. Franklin testified that he followed up by training with the Claimant on January 26 and 27, and conducted a second field audit on January 27. He said he gave the Claimant a copy of the first audit on the 26th, so that he might be prepared for a second audit on the 27th. He scored 69.5 on the second audit. However, Mr. Franklin said he did not complete the audit on those parts on which the Claimant made the poorest scores on the first audit, because he had already received a failing grade on other parts of the second audit.

Mr. Franklin stated that he disqualified the Claimant for failing to follow instructions because, in his opinion, the Claimant has been adequately trained and knows how to do the work, but he fails to comply with rules, procedures, and instructions; in his words, "[H]e can do it, but he's not doing it." When asked about the Claimant's training opportunities, Mr. Franklin said,

He, he received every training that we had in place: Overland Park training, Elements, Basic, Thermite, Frog, took the CBT test last year with a passing score. Yes, he, he pretty well, was pretty well in compliance as far as being qualified, but he's, he's just not complying with instructions in the field. [Answer No. 70.]

Roadmaster Jons Skovbo testified about the quality of the Claimant's work. He said, "The length of his work didn't seem to last very long. The quality wasn't there." [Answer No. 153.] He said he suggested the Claimant do more studying, and he would have Mr. Franklin come out to assist him.

Lead Welder Randall G. Young was working with the Claimant when the field audits were made. They had been working together for about six months, he said. He testified that he felt the Claimant was deficient in frog welding, although he understands the techniques of welding. He said, "You know, it's just a matter of doing it." [Answer No. 197.] In his opinion, the Claimant had been briefed and retrained on the deficiencies noted in the first audit.

The Claimant's testimony was essentially a challenge of the accuracy of Mr. Franklin's field audits and defense of his qualifications.

On March 15, 2005, the Carrier's Division Engineer advised the Claimant that his disqualification would remain in effect, for violation of Maintenance of Way Operating Rules 1.3 and 1.4. Rule 1.3 prescribes the various rules, regulations, and instructions which govern employees, and requires that they be familiar with them and have copies available. Rule 1.4 reads:

Employees must cooperate and assist in carrying out the rules and instructions. They must promptly report any violations to the proper supervisor. They must also report any condition or practice that may threaten the safety of trains, passengers, or employees, and any misconduct or negligence that may affect the interest of the railroad.

The Carrier's disciplinary decision was promptly appealed by the Organization, which argues that the Carrier failed to prove violation of the Rules cited above. It states that the Claimant's disqualification was based on the field audit, but no rule violations were disclosed therein. The Organization asserts that officers in the Carrier's Engineering Department have stated that such audits will never be used for purposes of disqualification.

The Organization further argues that the Claimant was working under the direction of Lead Welder Young, who was directly responsible for the work being done, but Mr. Young was not disciplined for anything. The Organization also points to the Claimant's past record, three years of service as a Welder with no disciplinary entries. It suggests that a failing audit does not result in a violation of the rules, and that the welding occupation is one of continuing learning experiences.

The Carrier responds that during the field audit, the Claimant's skills as a welder were deficient. After the initial audit, he and the Lead Welder were allowed to correct such deficiencies as failure to have proper manuals and equipment on hand. The Welding Supervisor worked personally with the Claimant for five days, the Carrier states, to help him attain improvement in his welding skills, but with no improvement noted, he disqualified him. The Carrier points out that even the Lead Welder admitted the Claimant lacked the necessary skills. The Carrier therefore denied the appeal.

The Board has carefully examined the transcript of evidence and testimony in the record, and considered the Parties' respective positions.

As a general rule, an employer has a right to determine whether its employees possess the qualifications for the job to which they are assigned. That right can be rebutted, of course, but the burden is on the other party. If field audits cannot be used for purposes of disqualification, as the Organization argues, then one is left to ask, by what criteria can an employee be disqualified? Assuming, for the sake of argument, that the Organization is correct, when an audit discloses deficiencies and an employee fails to correct those deficiencies, then what? Is the Carrier deprived of the use of such an audit to support the employee's disqualification?

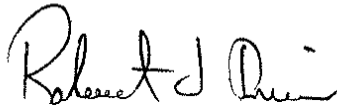
To establish if a disqualification is appropriate, a determination must be made as to whether or not the employee is capable of performing the work. In this case, the record indicates that an audit was made on January 24, 2005. Mr. Franklin returned to train the claimant on January 26th gave him a copy of the January 24 audit for corrective purposes, and spent the day with him on January 27 when he made the second audit. On January 27 the Claimant was given the opportunity to disprove the findings of the audit by demonstrating his ability to perform the work to acceptable standards. However, the Claimant did not demonstrate such proficiencies. There can be no logical explanation for the Claimant failing to demonstrate such adequate ability other than he was incapable of doing so. As such, one must conclude, as the Carrier did in this case, that a disqualification of the Claimant was appropriate.

The Board finds no comfort for the Claimant in the fact that he was working with Lead Welder Young. The Claimant's work done personally as a Welder was examined by Mr. Franklin. Mr. Young's qualifications are not at issue here.

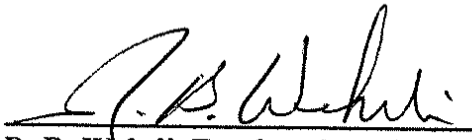
Boards such as this will generally not overturn an employer's determination of disqualification unless prejudice, arbitrariness, discrimination, or patent unfairness is present. This is not such a case.

AWARD

The claim is denied.



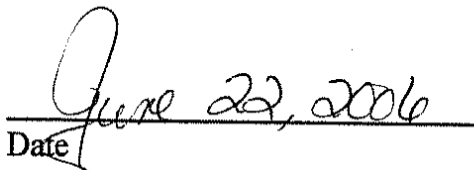
Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



Samantha K. Rogers, Carrier Member


Date