

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
IBT RAIL CONFERENCE )  
and )  
CANADIAN NATIONAL/WISCONSIN )  
CENTRAL LTD. )

Case No. 16  
Award No. 16

Claimant: S. Lewein

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it improperly disqualified and removed and withheld Claimant S. Lewein from his assigned foreman position on the Waukesha Section beginning on November 17, 2010 (Carrier's File WC-BMWED-2010-00043 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant Lewein must be compensated for eight (8) straight time hours each day for the dates of November 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and December 1, 2 and 3, 2010 at the applicable foreman rate of pay as well as any overtime hours he would have worked in the foreman position on the Waukesha Section during the claim period."

**Findings:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

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

The Organization claims that the Agreement and applicable Side Letter were violated when Claimant was not returned to work in a timely fashion. Claimant failed an Operating Rules test and was removed from service. He passed the test the following day and should have been returned to work. Further, he should not have been removed from service because the test is valid for two years and the two years expired in December 2010, not in November. Even if Claimant failed the test, he should have been allowed to work until his anniversary date.

The Carrier responds that the side letter is not controlling as it only applies to discipline matters. Further, he was qualified until he retook the examination. When he failed the examination is when he was properly disqualified. He then had to bid to another position. He bid, was awarded the position and began work on the start date.

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The evidence in the instant matter established that Claimant failed a Rules test on November 16, 2010. He was disqualified on November 17. He re-took the test and passed it on November 18, and was therefore eligible to return to work. Claimant did not return to work until he bid to another position and reported there on the first day of work.

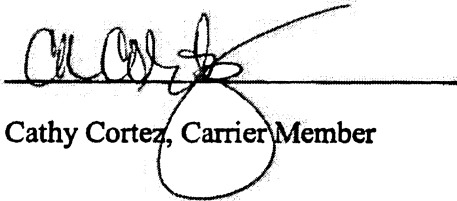
This Board rejects the Organization argument that Claimant was qualified until his anniversary date. Rather, once he failed the examination, he was properly disqualified. However, when he passed the examination shortly thereafter, he should have been returned to work pursuant to the Side Letter. Claimant should have been returned on November 19, 2010.

**Award:**

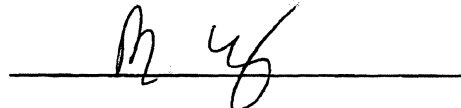
Claim sustained in part. Carrier to pay Claimant, within thirty (30) days of the effective date of the Award, 8 hours straight time for each work day missed following passing the Rule examination: November 22, 23, 24, 25, 26, 29, 30, December 1, 2, and 3, 2010.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on November 16, 2015