

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYEES DIVISION )  
IBT RAIL CONFERENCE )  
and )  
WISCONSIN CENTRAL LTD. )  
)

Case No. 44  
Award No. 44

Claimant: G. Luther

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

1. The Carrier's decision, by letter dated October 4, 2012, to disqualify employe G. Luther from his position as a mobile work equipment mechanic was arbitrary, improper, unwarranted and a violation of the Agreement (Carrier's File WC-BMWED-2012-00028 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant G. Luther shall be afforded the full remedy prescribed in Rule 31 of the Agreement."

**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.

Claimant's position was abolished and he displaced to a mobile equipment mechanic position on September 6, 2012. He was disqualified from the position on October 4, 2012 and advised that it was due to his failure to perform duties in a satisfactory manner.

The Organization argues that Claimant was improperly disqualified for a deficiency after he had displaced pursuant to Rule 11. The Organization continues that there was no training for the position, therefore the Carrier cannot cite Claimant for a lack of training. Further, the Carrier never specified the deficiencies that disqualified claimant and thereby denied him the opportunity

to correct. The Carrier only mentioned some nonspecific deficiencies late in the claim process. Moreover, the Carrier cites Rule 6(c) for the disqualification. However, the rule only applies to bid positions and does not apply to this situation in which Claimant displaced to the Mechanic position. The Organization continues that Claimant's inability to find some locations was due to him being assigned to the wrong territory. Had Claimant been assigned to the correct territory, then there would have been no issue with the locations of assignments. The Carrier responds that the Claimant was disqualified because he lacked the ability to troubleshoot and repair equipment and could not find some of the locations. It also alleged Claimant presented a safety risk because he could not properly repair and troubleshoot despite mentoring and training. Further, the Carrier contends that the Claim for the pay differential between the assignment he had and the assignment he would have had is inappropriate.

**Pertinent to the resolution of this dispute are the following Rules:**

**RULE 06 - BULLETINING OF POSITIONS**

\* \* \*

- C. Positions will be awarded to the senior applicant who possesses the general qualifications, subject to the limitations in Paragraphs E and F below. Individuals who are awarded positions for which they do not have the specific qualifications will be given a minimum of ten (10) and a maximum of forty (40) working days to fully qualify for the position. Employees failing to qualify for positions will, within 7 days, return to their former positions unless they have been abolished or filled by senior employees, in which event they may exercise seniority.

\* \* \*

**RULE 11 - EXERCISE OF SENIORITY (DISPLACEMENT)**

- A. Employees whose positions are abolished or who are displaced will have the right to displace any employee junior to them, provided they possess the specific qualifications of the job and that such displacement rights are exercised by physical displacement within seven (7) days from the date released from the employee's prior position. Vacation time taken will extend the employee's displacement time by the extent of time taken.

The burden is on the Organization to establish a violation of the Agreement. Here, the Organization must show that the disqualification was done arbitrarily or unreasonably. In the instant matter, the disqualification letter stated that Claimant was disqualified, in pertinent part:

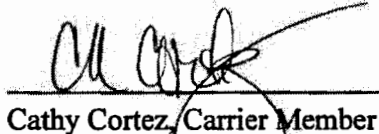
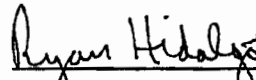
"You displaced to the Work Equipment Mechanic position on September 6, 2012. A Work Equipment Mechanic is required to troubleshoot and repair railroad equipment. Since the displacement you have failed to perform your job duties in a satisfactory manner."

This Board has reviewed the record. The Carrier can determine job requirements and qualifications. The Claimant displaced to the position and worked in that position for 28 days. The Carrier's disqualification notice to Claimant simply stated that he was unable to perform the job satisfactorily. The Organization asserts that Claimant met the minimum qualifications because he was allowed to displace to the position. The Organization also maintains that the Claimant was not assigned to the proper territory and therefore his failure to find locations cannot be considered against him. During the handling of the claim, the Carrier initially asserted that Claimant was unable to perform his job later asserted that Claimant was a safety risk. However, there is nothing in the record in this matter to support the Carrier's position and refute or rebut the Organization's claims.

A review of the record shows no support for the Carrier's blanket assertion in the October 4, 2012 disqualification letter. Claim sustained.



Brian Clauss, Chairman

  
Cathy Cortez, Carrier Member

Ryan Hidalgo, Organization Member

Signed on December 31, 2016