

PUBLIC LAW BOARD NO. 7599

AWARD NO. 107
CASE NO. 107

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to allow Mr. J. Manor a demonstration of his foreman abilities to a qualifying committee per written request dated September 16, 2014 (Carrier’s File GTW-BMWED-2014-00031 GTW)
2. As a consequence of the violations referred to in Part 1 above, Claimant J. Manor shall be compensated all straight time and overtime hours at the foreman straight and overtime rates of pay worked by Construction Gang #1 until allowed to demonstrate his foreman abilities to a qualifying committee.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The on-property record in this matter seeks to resolve a dispute over the proper application or Rule 3, Section 2 of the Agreement. It reads, in pertinent part, as follows:

In making application for an advertized position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request or may be required, to give a reasonable, practical demonstration of this qualifications to perform the duties of the position. Such written request must be made to the Designated Company Officer within five (5) days from such dispute.

According to the facts established by the on-property record, claimant was actually awarded the foreman position on Construction Gang #1 and was allowed to begin serving in it. He was not withheld from assuming the position when he applied for it. Thereafter, it is unrefuted in the record that three events occurred under his leadership as foreman. First, on or about August 22, 2014, the gang built a road crossing panel that had wide gauge that had to be disassembled and rebuilt. On or about August 27, 2014, he took about two hours to set a hi-rail truck on the track and had to be assisted. On August 28, 2014, the gang only tamped 12 ties in a switch the entire day. As a result, claimant was disqualified from the foreman position.

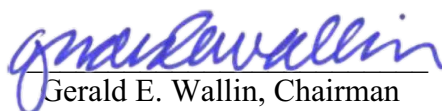
It is also unrefuted that when a Carrier supervisor discussed his performance with claimant, claimant said he understood the reasons and may have taken a foreman position before he was ready. Claimant also stated that he was glad he could bump back to a headquartered location.

As the Carrier's highest designated officer wrote, Rule 3, Section 2 does not allow for a demonstration of qualifications after being disqualified from the position.


Given the state of the on-property record, we find the Organization has not proven that the Agreement was violated as alleged. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member


John Schlismann,
Organization Member
John Ingoldsby,
Carrier Member

Date: August 2, 2021