

PUBLIC LAW BOARD NO. 7660
CASE NO. 2

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it disqualified Claimant C. Arbet as a system foreman on Gang 9026 on February 24, 2000 without ever having notified Claimant in writing of said disqualification (System File T-1248U-503/1579082 UPS).

2. As a consequence of the violation referred to in Part 1 above, the Carrier shall clear Claimant Arbet's personnel record of the system foreman disqualification and restore the Claimant's system seniority date.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This claim, filed on October 2, 2012, protests Claimant's disqualification from the System Foreman position on Gang 9026 on or about February 24, 2000, asserting that Claimant first learned of his disqualification in a conversation with his supervisor on

August 9, 2012, and that there was no written notification of such fact at the time as required by Rule 15. The record contains evidence that Claimant's bid to that gang was an opportunity to establish System Foreman seniority, but that he failed to qualify and was provided with his "options" on March 23, 2000. It also reveals that Claimant was sent annual letters listing each roster that he retains seniority on, as well as instructions for challenging seniority disputes, and that, despite the fact that no System Foreman seniority roster appeared on his letters, he never filed a challenge to this fact during any of the prior 12 years.

The Organization argues that Claimant's statement establishes that he was never informed by Carrier that he was disqualified as a System Foreman until August 9, 2012, making the claim timely, and violating the Rule 15 timely written notice of disqualification requirement. It asserts that Claimant's position was abolished in February, 2000, which is why he was given his "options."

Carrier contends that the claim is procedurally defective under the clear language of Rule 49(a) requiring claims to be presented within 60 days from the date of occurrence. It notes that Claimant's self-serving statement that he had no knowledge of the fact of his disqualification must be defeated by the documentary evidence showing that each year he was informed what seniority rosters he was on, and never filed a dispute that he was not shown to be on the System Foreman roster. Carrier maintains that this time limit violation requires dismissal of the claim without reaching the merits, citing Third Division Awards 37646 and 39705. It also asserts that the Organization has failed to meet its burden of proving a violation of the Agreement.

A careful review of the record convinces the Board that this claim was untimely filed under Rule 49(a) requirements and is barred from consideration on the merits. See, Third Division Award 37646. The occurrence being protested allegedly happened in

February, 2000 and the claim was filed in October, 2012. Claimant's assertion that he had no knowledge that he had been disqualified from the System Foreman position in February, 2000 and had no seniority on that roster, in the face of evidence that he received annual letters setting forth the rosters he appeared on and his corresponding seniority dates, and that the System Foreman roster did not appear on any of the 12 letters he received in the interim which went unchallenged, strains credulity. Since we find, at the very least, constructive knowledge of the matter being protested far beyond the time period for initiating a claim under Rule 45(a), the claim is dismissed.

AWARD:

The claim is dismissed.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

K. N. Novak

K. N. Novak
Carrier Member

Andrew Mulford

Andrew Mulford
Employee Member

Dated: 5/30/14

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