

PUBLIC LAW BOARD NO. 7660
AWARD NO. 49

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY
[Former Southern Pacific Transportation Company (Western Lines)]

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The disqualification of Mr. C. Ene as a Track Foreman Class 001 effective December 15, 2014 was arbitrary, improper, in violation of the Agreement (System File AE-1446S-801/1622193 SPW).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant C. Ene’s qualification as track foreman Class 001 be reinstated, reflected in his record and made whole for any loss.”

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 case involves the December 15, 2014 disqualification of Claimant from the Track Foreman Class 001 position. Claimant was working in that position on Gang 8682 for over a year prior to being disqualified, and had no issues in that position. The Letter

of Disqualification written by Manager Hillman cites 2 incidents of substandard performance, one on 11/17/14 when Claimant allegedly brought an incorrect rail plug to a train causing a delay, and the other on 11/27/14 when the crew spent the day looking for materials, that were in the yard, and failed to timely perform the task of installing an insulated joint. The record reflects that Claimant had voluntarily applied for, and received, a System Laborer position on Gang 0087 on December 11, 2014, four days prior to the disqualification, but that the Manager held him on the job as Foreman until issuing the disqualification letter. The Organization requested an unjust treatment hearing pursuant to Rule 48(n), which was held on January 29, 2015.

The claim was initiated and appealed by the Organization based upon the contention that the reasons asserted for the disqualification, and Manager Hillman's actions, reveal that the decision was arbitrary, and in retaliation for Claimant bidding off his gang. It notes that the Manager waited a month after the alleged incidents to take any action, did not do so until Claimant successfully bid off the job, and then held him in the position of Foreman for an additional 4 days, which undermines any contention that his performance was not acceptable or he could not properly lead his crew. The Organization sets out a list of undisputed facts brought out in the formal conference, indicating that Claimant had all proper qualifications and training for the position, his Manager took no issue with his safe work practices or understanding with all media related to track construction and maintenance, his abilities had never been questioned during the year he held the position, and the incidents cited resulted in, at most, a 45 minute train delay. It included a statement from the Vice Chairman concerning his dealings with Claimant showing that he was knowledgeable, and his investigation with Claimant's gang members who spoke highly of him. The Organization pointed out that Manager Hillman admitted wanting to have Claimant work for him again.

Carrier's denials include an email statement from Manager Hillman citing Claimant's failure to demonstrate the ability to perform the tasks association with FRA

213.7, and his lack of ability to clearly communicate instructions to his gang. Its responses include the argument that it acted within its managerial authority to determine qualifications and fitness and ability, that the Manager presented reasonable and legitimate bases for his action, and that the Organization failed to meet its burden of proving that its decision to disqualify Claimant was arbitrary.

A careful review of the record convinces the Board that, based on these specific facts, the Organization met its burden of showing that Carrier's disqualification of Claimant was arbitrary. This finding is necessitated by the time lapse between the alleged incidents and any action by the Manager, and his decision to hold Claimant over 4 additional days, to act in his capacity of Foreman, after he bid off the gang. Whether Manager Hillman was motivated by Claimant voluntarily leaving his gang, the fact remains that it was his responsibility to assure the safety and productivity of the gang. His expressed concerns with Claimant's fitness and ability to lead the gang after the cited incidents should have led to his disqualification earlier. Rather, not only was nothing said or done at the time, but Manager Hillman decided to hold Claimant over in his Foreman position for 4 days after he had received a bulletined position on a different gang. We are unable to accept that these are the actions of a Manager who truly believed that Claimant was not qualified to be in the Track Foreman position he occupied.

While the Board is cognizant of Carrier's managerial prerogative to set qualification standards and determine fitness and ability, under these specific facts, it cannot be concluded that Carrier's exercise of its managerial discretion in disqualifying Claimant from the Track Foreman Class 001 position on December 15, 2014 was rationally based and not arbitrary. Based on the facts of this case, the Carrier shall reinstate Claimant's qualification as Track Foreman Class 001.

AWARD:

The claim is sustained as outlined above.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Dated: December 9, 2017

K. N. Novak

K. N. Novak
Carrier Member

Andrew Mulford

Andrew Mulford
Employee Member