

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 49

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

1. The Agreement was violated when the Carrier refused to allow employee C. Rueth to exercise his seniority in accordance with Rule 6 of the Agreement after he was disqualified from a foreman position on May 13, 2009 (Carrier’s File WC-BMWED-2009-00012).
2. As a consequence of the violation referred to in Part 1 above, Mr. Rueth shall be compensated for eight (8) hours each day for May 13, 14, 15, 18, 19, 20, 21, and 22, 2009 at the applicable machine Operator D straight time rate of pay and any overtime that would have been worked on the RS73 Rail Gang position of Machine Operator D Heater at the applicable time and one-half rate of pay.”

FINDINGS:

The Organization filed a claim on the Claimant’s behalf, alleging that the Carrier violated the parties’ Agreement when it refused to afford the Claimant the right to exercise his seniority onto another position after he was disqualified from a foreman position and instead immediately placed the Claimant into furlough status. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant did not desire or bid into the foreman position, because Rule 6C obligated the Carrier to allow the Claimant to exercise his seniority and displace to a position he was qualified to occupy once he no longer held the qualifications to occupy the force-assigned foreman position, because the Carrier unreasonably and unilaterally

placed the Claimant into furlough status without affording him the right to exercise his seniority under Rules 6 and 11, and because Rule 34 clearly provides that should an employee be considered unqualified for an assignment then the employee shall be entitled to exercise seniority under Rule 11. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof in that the Claimant knowingly allowed his Commercial Motor Vehicle Medical Certificate to expire and this action was designed to purposely avoid being placed in the foreman position, because the Claimant was the sole cause of his disqualification as a foreman and of any loss of compensation during the period claimed so the rule required that the Claimant be furloughed, because Rule 6C does not apply in that such a Certificate is a general qualification and Rule 6C addresses specific qualifications and the Claimant was qualified when he was awarded the foreman position, because the Claimant was not qualified to exercise his seniority so he was properly placed in furlough status until he placed himself during the next bid cycle, and because the Claimant is not entitled to any remedy under the circumstances.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it refused to allow the Claimant the right to exercise his seniority after he was disqualified from his foreman position on May 13, 2009. Therefore, the claim must be denied.

The record reveals that the Claimant was assigned to a vacant assistant foreman's

position on March 27, 2009. That position included a qualification of possessing a commercial motor vehicle medical certificate. The Claimant worked that position until May 8, 2009, when he was force assigned to a foreman's position. The record reveals that the Claimant allowed his commercial motor vehicle medical certificate to expire on May 10, 2009, rendering himself without the qualifications to hold either the assistant foreman position or the foreman position to which he was recently assigned. Since the Claimant was unqualified to hold either the position that he had held or the one that he had been placed into on May 9, 2009, he was placed on furloughed status. The Claimant bid a position in the next bid cycle and was awarded a position for which he possessed the qualifications and went back to work on May 22, 2009.

The Organization has not shown that the Claimant's rights were violated. The Claimant knowingly failed to renew his commercial motor vehicle medical certificate, which rendered him unqualified to work either the assistant foreman position or the foreman position. Rule 6C was not applicable because it addresses specific qualifications. The Claimant was qualified when he was first awarded his foreman position; but since the Claimant was responsible for rendering himself unable to work in that position, Rule 6C does not apply to this situation. The Claimant admitted during an investigation that he did not report to his new position because his "medical card ran out." When he was asked why he did not make an appointment to have it renewed, he stated he "just didn't feel like it."

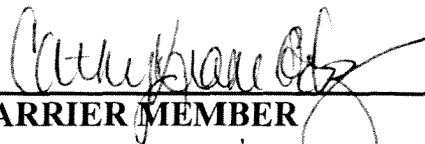
Since the Organization failed to meet its burden of proof in this case, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 10/31/12



ORGANIZATION MEMBER

DATED: October 31, 2012