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Docket No. CL-8267  
Award No. 16

SPECIAL BOARD OF ADJUSTMENT NO. 177 (PRR)

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-3, by disqualifying C. E. Stone, Clerk, from Clerical Position K-42-D at Greenville, Illinois, Southwestern Division, effective August 5, 1952.

(b) Claimant, C. E. Stone, should be allowed eight hours pay a day, as a penalty, for each day he was held off Position K-42-D, commencing August 5, 1952, and continuing until December 8, 1952. (Docket W-928)

FINDINGS: Claimant, clerical employee, exercised seniority on position of clerk in the office of track supervisor and freight agent at Greenville, Illinois, on July 23, 1952, after posting on it for eight days. On August 4 he was given a letter of disqualification by the track supervisor whereupon he displaced the incumbent of his former position at Rose Lake Yard. A few months later the track supervisor who had disqualified Claimant was replaced and, effective December 8, Claimant again made application for and was awarded the position at Greenville, subject to examination which consisted of performing the duties of the position unassisted for 5 days. He did this acceptably and continued on the position. It is claimed that he was improperly disqualified on August 4.

Carrier first contends that Claimant was disqualified because he requested it. The track supervisor said that claimant requested it because he did not know enough about the position and could not handle it, while the freight agent said he requested it because he did not like the work and wanted to return to Rose Lake Yard. In view of Claimant's explicit denial of any such request and of his seeking return to the position on first opportunity, we cannot find that Carrier has supported that contention.

Carrier contends further that Claimant was properly disqualified because his numerous errors demonstrated his lack of qualification as shown by the statements of the track supervisor and the freight agent. The former submitted a list taken from his notes showing the acts and omissions causing the disqualification. All of them appear to be petty errors of inexperience likely to happen in the case of any person becoming familiar with a new position and fail altogether to show disqualification for the work. The freight agent in his statement asserts that Claimant was unable to rate and route LCL freight "account of not having experience in this line of work" and that he, the agent, had to stay each evening to take care of this part of the work. There is no suggestion of any attempt on his part to inform or assist Claimant or of cooperation with him in his efforts to qualify, as required by rule, or of Claimant's lack of capacity to do the work with reasonable assistance.

Such meager and unconvincing showing of incapacity together with the showing that a few months later without further experience or further posting he successfully held the position, convinces us that Claimant was improperly disqualified and that claim (a) must be sustained.

As to claim (b), the Agreement provides no penalty for improper disqualification and in such case Claimant is entitled only to be made whole, unless the character of the violation is such as to justify a more severe penalty in order to discourage future violation of the rule.

No item of loss other than wage loss is here shown and Claimant should be reimbursed for loss of earnings during the period he was off the position at Greenville and disqualified.

AWARD: Claim (a) sustained and Claim (b) sustained in accordance with the findings.

Signed this 17th day of July, 1957.

/s/ R. H. Skinner, Jr.  
R. H. Skinner, Jr., Carrier Member

/s/ S. V. W. Loehr,  
S. V. W. Loehr, Employee Member

/s/ Mortimer Stone  
Mortimer Stone - Chairman

CONCURRING OPINION (Award No. 16 - CL-8267)

In signing some other awards of this Special Board I have not agreed with all the statements therein contained. However, I feel compelled in this case to record my disagreement with a dictum contained in the Findings.

Even assuming the facts of record show that Claimant was improperly disqualified, the Claimant at most would only be entitled to any proved loss of earnings, which is the actual finding and award in this case. I cannot agree with any dictum which might indicate that this Board has any authority to go beyond such an award and assess penalties not provided in the contract in order to discourage future violations.

/s/ R. H. Skinner, Jr.  
R. H. Skinner, Jr., Carrier Member