

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 159  
Case No. 246

PARTIES Brotherhood of Maintenance of Way Employees  
TO and  
DISPUTE St. Louis Southwestern Railway Company

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

1. Carrier violated the effective Agreement when Mr. C.L. Rogers was disqualified as Track Foreman on December 6, 1979.
2. Claimant Rogers shall be paid the difference in the rate of pay of a Track Foreman and the rate of a Track Laborer beginning December 6, 1979 and continuing until such time Mr. Rogers is returned to his position as a Track Foreman; also, that this charge be stricken from his record."

FINDINGS

Upon the whole record, after hearing, the 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 is a disqualification dispute in which Claimant who had been functioning for approximately two years as a Track Foreman was disqualified on December 6, 1979. The basis for this disqualification was:

"After repeated instructions on specifications in the proper method of constructing switches, Mr. Rogers had failed to observe such instructions ...."

His disqualification was the result.

A hearing was requested by Claimant which was held on January 8, 1980 and concluded on the following day. Based on the hearing Claimant was advised that Carrier's review indicated that it was justified in its action of disqualification.

The basic position of Carrier was that Claimant Rogers was disqualified because his work

was not acceptable or satisfactory. Carrier argues that Claimant had sufficient opportunity and instructions to perfect his performance but his continued failure to correctly lay a switch warranted his disqualification. The Carrier states further that a Track Foreman in charge of the switch laying gang must be himself capable of properly performing such work to justify Carrier continuing him in the leadership role.

Petitioner's position essentially is that Carrier has failed to prove its case. In short, the Organization argues that Carrier has not established the fact that it was justified in disqualifying Claimant. Claimant insists that he followed the instructions given to him by the District Maintenance of Way Manager Bass and that he was disqualified without being given adequate reason by Mr. Bass. Claimant insists that he performed the work in question properly as instructed.

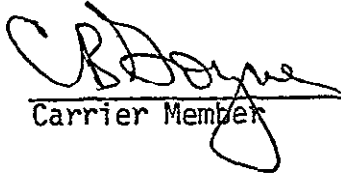
First, it must be noted that at the hearing herein there were a number of points in which there was conflicting testimony. It is well established that such conflict must be resolved by the hearing officer not by Boards such as this. In the instant case, the hearing officer resolved the conflict by holding that Carrier's witnesses were correct and Claimant was incorrect in the areas of dispute. Given the credibility findings the sole question is did Carrier meet its burden of proof that it had a proper basis for disqualifying Claimant. The answer must be affirmative. There was ample evidence in the record to indicate that Claimant had been given two years to learn the position and from the standpoint of his immediate supervisors he had not done so. On the other hand, the Organization had the responsibility for establishing that Claimant was indeed qualified to perform the work under examination. Such evidence does not appear in the record. In short, Petitioner handled this dispute much as it would a discipline case and from the standpoint of burden of proof Carrier has established its basis for its disqualification and Petitioner has not adequately indicated any reason for overturning that decision. Hence, the claim must be denied.

#### AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

January , 1981  
Houston, Texas