

## STATEMENT OF CLAIM

- ### OPINION OF BOARD

The Carrier disqualified Claimant from his track foreman's position citing a record that showed that first, on October 4, 1983 Claimant was disqualified as a foreman and suspended for 14 working days as a result of moving track machines on main line track without securing authority from a dispatcher. However, on December 20, 1983 Claimant's foreman seniority was re-established. Second, on February 20, 1986 Claimant was assessed 25 demerits for failing to place slow order flags issuing a slow order for trains. Third, Claimant was assessed a 60 day suspension in July 1987 for being careless concerning the changing of a defective rail which resulted in Claimant's injury. That discipline was upheld by this Board in Award 233. Fourth, in making its determination, the Carrier also asserted that Claimant has had problems associated with properly communicating with dispatchers when obtaining authority to occupy track. Fifth, the Carrier finally asserted that as a result of injuries to members of his gang and to himself,

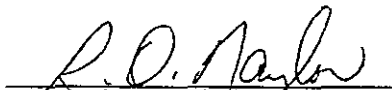
Claimant has been spoken to at length by a Carrier official concerning Claimant's safety habits. From the above, the Carrier concluded that Claimant had problems performing the duties of a track foreman and disqualified Claimant from that position. Claimant was permitted to exercise his seniority in other job classifications.

It is well established that fitness and ability determinations are the right of the Carrier subject to a showing by the Organization that the decision was arbitrary or capricious. We find that the Carrier has sufficiently demonstrated its basis for making the determination to disqualify Claimant. The record shows that Claimant has established a pattern of difficulty performing the duties of the position. While the merits of the individual circumstances may be subject to argument, the standard requires that the Organization must demonstrate that the Carrier's disqualification decision was arbitrary or capricious. In light of the totality of the circumstances, we find that the Organization has not done so.

**AWARD**

Claim denied.

  
Edwin H. Benn  
Neutral Member

  
R. O. Naylor  
Carrier Member

  
S. A. Hammons, Jr.  
Organization Member

Houston, Texas  
June 11, 1990