

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 183

Case No. 270

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis, Southwestern Railway Company

STATEMENT
OF CLAIM

- "1. Carrier violated the effective agreement when Track Foreman Marshall Frazier was unjustly disqualified as Foreman.
2. Claimant Frazier shall now be reinstated to his former position as Foreman with the St. Louis, Southwestern Railway Company with pay for time lost commencing September 9, 1982, and running concurrently until such time as he is reinstated."

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.

The record indicates that claimant had been employed by Carrier as a Laborer on January 21, 1974. He had been promoted to Foreman on October 8, 1978, and served as Foreman from that date until he was disqualified. He completed the Maintenance of Way Foreman Training Program and was issued a Certificate of Completion and Certification on August 27, 1982. On September 8, 1982, he was displaced from his position as Extra Gang Foreman at Pine Bluff, Arkansas, and exercised his seniority by displacing as I&R Foreman at Jonesboro, Arkansas. The record indicates that on his first day of work, on September 8, 1982, he was given a test by two supervisors and, subsequently that same day, disqualified as a Foreman "...account your lack of knowledge of rules and regulations for the Maintenance of Way and structures and FRA Track Safety Standards". Following his disqualification, he was able to exercise his seniority to a non-Foreman's position.

At Petitioner's request, a hearing was held on October 12, 1982, and subsequently Carrier concluded that the evidence indicated that he should be disqualified as a Foreman. The claim herein resulted thereafter.

Carrier insists that the evidence adduced at the hearing amply justifies its decision to disqualify claimant. The test given to him by the two supervisors was sufficient to warrant his disqualification, according to the Carrier. Concerning the discrepancy and conflicts in testimony adduced at the hearing, Carrier notes that, obviously, the weight to be given to the testimony of the divergent witnesses must be determined by the hearing officer. In this instance, the hearing officer determined that the Carrier's witnesses were credible and that Petitioner was not.

The Organization claims that this was an instance of two supervisory employees deciding to disqualify a man as Foreman who had served successfully for four years as a Foreman. Thus, they attempted to disqualify him on his very first day at work without giving him any real opportunity to prove his proficiency. The Organization alleges that Carrier's actions in this instance were arbitrary, capricious and unreasonable.

An examination of the record in this case reveals some strange anomalies. First, it is evident that this is the first test given to an employee under similar on-the-job circumstances and, further, this was not a "normal" test. The test, in fact, was an ad hoc determination by two supervisors based on their own judgments. Furthermore, the testimony of the two supervisors with respect to claimant's performance in the ad hoc test was on a number of critical issues divergent. Thus, the credibility finding not only had to make a distinction between the testimony of the claimant and the two supervisors, but as between the two supervisors, as well. It seems strange that in each instance the determination was for the most adverse testimony with respect to claimant.

The Organization insists that in this instance the claimant was "framed" by the two supervisors, but has failed to produce any evidence which directly supports that accusation. However, there was a very important circumstance which deserves consideration. It is strange indeed that approximately one week prior to the ad hoc test, the claimant was certified by Carrier as having completed the Maintenance of Way Foreman Training Program at the Southern Pacific Transportation Company. Further, there is no indication whatsoever in the record

as to why the two supervisors found it necessary for the first time to give a Foreman with four years of experience, which was deemed satisfactory, a test on the first day of work. There was no indication that any other supervisory employee in the position of Foreman had been given any such test either before or since that date. The Board also notes that the testimony of the supervisors involved in assessing claimant's qualifications was highly questionable on a number of counts. For example, one of the areas that claimant was deemed to be unsatisfactory was in the use of the track level board. After testimony, which was not refuted, indicated that the first level board was out of adjustment and that neither the claimant nor the supervisors could adjust it, and after the supervisors got a second board which was properly adjusted, claimant used it satisfactorily; nevertheless, he was cited as being unable to appropriately use the track level board to check the level of the switch.

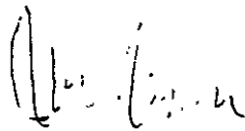
After careful evaluation of the entire record, the Board is of the opinion that the record of the investigation does not establish that claimant was properly disqualified. On the contrary, the record is a weak record with many unexplained factors, including the unusual circumstances of the administration of the test. It is particularly important to note that the disqualification was deemed to be not for lack of performance, but for lack of knowledge of the rules and regulations and the safety standards. There was no testimony whatsoever with respect to the knowledge of the rules or the track safety standards adduced in the record of the investigation and, furthermore, claimant passed, indeed, a series of written tests involved in his Foreman Training Program which did include such material, just prior to the transfer to the new assignment. The Board must conclude that the claim has merit and must be sustained. In sustaining the award, however, it is noted that the compensation to be awarded claimant shall be the difference in compensation between the rates of pay of a Track Foreman and that of the position he occupied immediately after being disqualified as a Track Foreman.

AWARD

Claim sustained and the compensation to be awarded in accordance with the findings above.

ORDER

Carrier will comply with the award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member

Carrier Member

Houston, Texas

February , 1984