

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES)
TO)
DISPUTE) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Track Foreman L. D. Myhand was unjustly disqualified and was not allowed an investigation.

2. Claimant Myhand shall be paid for all time lost commencing September 29, 1984 and continuing until such time as he is reinstated to his position of Track Foreman, his personal record be cleared of the disqualification charge and his Track Foreman's seniority be restored intact." (MW-84-47-CB-Myhand; 53-768)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The question at issue in this dispute concerns a determination as to whether the Claimant, upon being notified by the Carrier that he was disqualified as a Track Foreman, was entitled to a hearing on such matter pursuant to either Article 14, "Discipline and Investigation," as the Organization claims, or Article 48, "Unjust Treatment," as the Carrier maintains.

The record shows that under date of October 4, 1984 Claimant was advised by the Carrier that as a result of his having been absent without authority on September 26, 1984 he was suspended from service without pay for September 27 and 28, 1984. This letter further notified Claimant that he was furloughed as the close of business on September 28, 1984.

By a second letter dated October 4, 1984, Claimant was advised: "Due to your inability to perform services as a Track Foreman as required by the Carrier you are disqualified as Foreman effective September 28, 1984. You may place yourself where your seniority permits."

Claimant subsequently made request of the Carrier for a hearing based on the suspension from service and on being disqualified as a Track Foreman.

In responding to Claimant, the Carrier forwarded two separate letters, each dated October 15, 1984. One letter advised a hearing based on the suspension assessed Claimant would be held on October 24, 1984. The other letter, as related to Claimant's disqualification as a Track Foreman read as follows:

"I am in receipt of your request for a hearing based on being disqualified as Track Foreman September 28, 1984. It has been established that Management is the sole judge of an employee's ability to qualify for promotion, per Article 8 of the current agreement. Therefore, you are not entitled to a hearing (investigation) under Article 14, as revised September 1, 1984. However, you do have recourse under Article 48 established September 1, 1984, a copy of which is included with this letter.

Your request is respectfully denied."

Claimant did not thereafter request a conference as provided in Article 48. Further, he failed to present himself for hearing on October 24, 1984 as related to the two-day suspension.

In the Board's opinion, absent any evidence of record refuting the Carrier contention that it has been recognized as the sole judge of an employee's ability to qualify for promotion, it must be held that just as the Carrier has the right to determine an employee's fitness to be promoted it has the right, subject to review of its determination in a conference under Article 48 and such determination as may thereafter be made in pursuance of normal grievance appeal procedures, to be the judge of an employee's ability to be continued in a foreman's position.

Accordingly, the Claimant not having availed himself of opportunity for a conference pursuant to Article 48, the Board has no basis to hold that Carrier did not have proper cause to disqualify Claimant as a Track Foreman.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



R. O. Naylor
Carrier Member



M. A. Christie
Organization Member

Houston, TX
August 29, 1986