

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee James F. Searce

Award Number 4152
Docket Number 4151

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Extra Yardmaster John Freeman be paid one day's pay each for May 22, 23, 25, 26, 27, 29 and June 5, 6, 7, 12, 1982 and all subsequent days until reinstated as Extra Yardmaster with all rights restored. Claimant disqualified and removed as yardmaster without being afforded a hearing, violating Article 7 of working agreement.

OPINION OF BOARD: Claimant began service with the Carrier in May of 1979 as an Operator-Clerk. He was promoted to Yardmaster and first performed service in that capacity on August 22, 1981. The record shows that between that day and May 21, 1982 he was on the Yardmaster's extra board and performed yardmaster service on 57 days during such period. According to the Claimant, on Saturday, May 22, 1982 he routinely contacted the appropriate clerk-operator to advise he would protect the yardmaster position on that date. In response, he was advised by the clerk that she had been advised not to call him for such position. The Claimant avers that, on Monday, May 24 he was furnished information by the Payroll Clerk that he was being "held off" Yardmaster assignments, but that he was never afforded any formal notice to that effect or given any reason for such action.

The Organization contends the Carrier's action was disciplinary in nature, that such action was taken without benefit of a specific charge or formal hearing and that the Carrier is thus liable for the Claim as stated. It points to Article 5(a) of the Agreement which it contends establishes a "probationary period" of 60 days in the Yardmaster position and 30 days cumulative service in that capacity during which the Carrier can unilaterally discontinue a prospective Yardmaster's service; inaction by the Carrier, per the Organization, constitutes approval and establishment of seniority for such candidates.

For the Carrier's part, it contends that it has the reserved right to establish qualifications for a position, to determine if an incumbent is meeting such qualification and, if not, to remove such person. This, the Carrier asserts, does not constitute discipline and is not covered by such provisions of the Agreement but is, instead, a proper exercise of the prerogative of management and only where such action is shown to be an arbitrary, capricious or flagrant abuse of discretion is its decision disturbed.

The Organization has cited several Awards including those on this Division (2659, 2915, 3158) where disqualifications were identified as discipline cases and disposed of by Board by applying that rationale. The distinction that may be drawn between such cases and this one is that the Claimants therein apparently were disqualified for specific instances or circumstances. Here, the Claimant was apparently not apprised as to what his offenses or shortcomings were. The Carrier expresses in detail the areas of its dissatisfaction with the Claimant

in its submission to this Board, no such advice was afforded the Claimant. Whether or not the parties choose to disagree on whether such action is disciplinary or not, it is clear to this Board that it was arbitrary and capricious and denied the Claimant his right to protect his seniority in the classification. The Organization's arguments to the contrary notwithstanding the time claim as presented on June 17, 1982 was perfected by the August 16, 1982 General Chairman's appeal -- from dates certain in May and June of 1982 to include "all subsequent days until condition corrected, 1982". The Board concludes that the original claim is properly here on review; the Award is drawn accordingly.

The Claimant shall be offered the opportunity to return to the Yardmaster Extra Board list, shall be used in that capacity. His work will be reviewed and if not found to be satisfactory, he will be apprised of any shortcomings in specific respects and at times proximal to such alleged shortcomings. If the Claimant is to be disqualified as a result of such specific shortcoming, he is to be notified prior to such disqualification. He is to be compensated at the rate for Yardmaster in existence at the time of the claim less any offset for compensation he may have received for those dates set out in the June 14, 1982 claim.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon

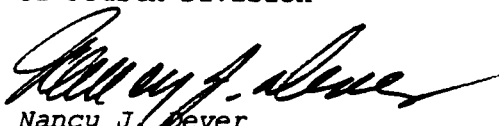
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1984.