

**PUBLIC LAW BOARD NO. 5332**

**SYSTEM COUNCIL NO. 6  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**and**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Case No. 214**

**Statement of Claim:**

Claim on behalf of Electrician S.M. Varner in Altoona, Pennsylvania, in that the Carrier reimburse Mr. Varner for lost wages and differentials beginning November 17, 2020, as a result of the Carrier's improper denial of his seniority right to displace a junior employee.

**Background**

In November 2020, Claimant S.M. Varner was employed as an electrician at the Carrier's Altoona, Pennsylvania facility. On November 12, 2020, he was displaced from his position by senior electrician Brandon Hribik. Claimant attempted to exercise his seniority to displace Dave Wilt, a less senior employee holding the position of Electrician Working Gang Leader (WGL) in the Maintenance Department at the Carrier's Juniata Locomotive Shop (JLS). Claimant had been filling in as acting WGL once per week for approximately 11 months. The permanent WGL position, however, pays a differential, and requires more qualifications than Claimant was exercising as acting WGL.

The Maintenance Department Electrician WGL position requires the following qualifications, as originally bulletined in 2017: 1. Clearly demonstrate leadership ability; 2. Assist with supervision and repair of all structures, utilities and equipment at JLS; 3. Actively participate in the safety process and hold daily safety meetings and perform safety audits; 4. Identify at-risk-behavior and correct it; 5. Enter payroll in payroll system; 6. Communicate using Outlook; 7. Possess working knowledge of available material resources to obtain material parts



to expedite repairs; 8. Possess working knowledge of mainframe, credit card and ODP material purchase systems, SAP ordering system; 9. Possess working knowledge of Juniata Power Plant, Water Treatment Plant and related equipment; 10. Possess working knowledge of the operation and repair of high voltage equipment and electronic control systems; 11. Be able to read and understand prints, schematics and parts manuals; 12. Working knowledge of 3-phase electrical generation and distribution systems; 13. Be familiar with state and federal environmental regulations and policies.

After indicating that he desired to bump into the Maintenance Department WGL position, Claimant was told that he would be required to take a test to determine whether he had the qualifications specified in the bulletin for the position. The test included questions regarding working knowledge of the Juniata power plant, the water treatment plant, and related equipment. It is necessary for the employee occupying the WGL position to understand not only plant operations, but how the systems work together. The employee must also be familiar with all state and federal environmental regulations and policies applicable to the facilities. When tested, Claimant was unable to answer the questions related to these aspects of the WGL position. He therefore was deemed unqualified for the position, and Wilt remained in the job.

By letter dated January 14, 2021, JLS IBEW Local Chairman D.A. Dorsch submitted a grievance alleging that the Carrier had violated the parties' Controlling Agreement, particularly Rule 14 (A), Rule 17 (E), and Appendix L, Guide for Differential Pay, by testing Claimant for the WGL position. Rule 14 (Seniority of Employees) (A) states:

Except as otherwise provided in this agreement with respect to student electricians, persons shall establish seniority as the date of last entrance into Carrier's service in an IBEW represented position. In the event the employee's employment application is not approved, he fails to pass medical examination, or otherwise fails to meet the Carrier's entrance requirements, he shall be terminated and his name removed from the seniority roster; provided, however, any



termination of the employee for these reasons (not including falsification of his employment application) must be made within sixty (60) calendar days after the first day service is performed.

Rule 17, addressing Vacancies or New Positions, provides in subpart (E):

An employee shall be given a reasonable trial to prove his qualifications, not to exceed five (5) working days. An employee failing to qualify for the position selected after being given a fair opportunity to demonstrate his qualifications, will retain all prior seniority and will return to his former position unless it has been abolished or permanently filled by a senior employee, in which event he will exercise seniority within twenty-four (24) hours of his return.

Appendix L – Guide for Differential Pay provides in its “Agreed Upon Guidelines for Administration of Letter Agreement Differentials” the following example:

Q. When must an employee’s qualifications be known to the railroad or established?

A. An examination or test to establish qualifications may be required as a prerequisite to assignment to a position subject to a differential of an employee who has not previously been qualified for such work by performance or otherwise.

### **Contentions of the Carrier**

The Carrier contends that the Organization has failed to meet its burden of proving any Carrier violation of Rule 14 (A) or Rule 17 (E). According to the Carrier, the Organization’s argument that Claimant was improperly denied a reasonable trial to prove his qualifications in violation of Rule 17 (E) is without merit. Rule 17 (E) is a general provision, while Appendix L – Guide to Differential Pay provides specific clarification that an employee seeking to obtain a position that includes a pay differential may be required as a prerequisite to establish his qualifications through an examination or test. The Carrier asserts that this more specific provision is applicable to Claimant’s case.

In response to the Organization’s argument that Claimant is familiar with the qualifications for WGL because he has held a gang leader position in the Maintenance



Department one day per week, the Carrier emphasizes that Claimant's work in performing that role requires only general troubleshooting and repair of electrical equipment, and the ability to climb—as demonstrated by the bulletin for the position in question when it was created in September 2019. The Carrier asserts that those qualifications are a far cry from the thirteen qualifications necessary for the Maintenance Department WGL. Moreover, Claimant's lack of qualifications for the Maintenance Department WGL position he sought to bump into was demonstrated by his inability to answer pertinent and important questions when tested.

The Carrier emphasizes that it is within its managerial prerogative to determine the qualifications for a position, and there is no contractual requirement to provide training to an unqualified employee when a qualified employee is already occupying the position. Under Appendix L, employees are expected to be qualified for a position for which they wish to exercise seniority at the time of their application. Additionally, the Carrier cites *PLB 5332, Award No. 120* (Conway, date unknown), for the proposition that while Rule 17 (E) provides for a reasonable trial up to five days in length, the rule “does not obligate Carrier to spend a full five days before deciding whether or not the employee is qualified.” Similar to the instant case, in *Award No. 120*, “the undisputed facts of record here, given the Claimant's obvious deficiencies on some very basic matters, there is no basis shown for disturbing Carrier's judgment in determining that he was in this instance punching beyond his weight. The Claimant was properly disqualified consistent with the terms of the Agreement.”

It is the Carrier's additional position that the Organization has failed to meet its burden of proving a violation of Rule 14 – Seniority of Employees. According to the Carrier, the Organization has provided no explanation for its claim that the Carrier violated Rule 14 (A). Seniority alone is insufficient to qualify an employee for a position subject to a pay differential.



Because the Organization has not demonstrated any violation of the rules which it cites in the instant claim, the Carrier argues that the claim should be denied.

### **Contentions of the Organization**

The Organization contends that the Carrier violated Rule 17 (E) by failing to give Claimant a fair opportunity to demonstrate his competency for the Maintenance Department WGL position. According to the Organization, Rule 17 (E) unambiguously provides that “An employee shall be given a reasonable trial to prove his qualifications, not to exceed five (5) working days....” The Organization asserts that Claimant should have been had this reasonable trial. In support of its position, the Organization cites language from *PLB 6353, Award No. 13*:

Perhaps recognizing that it is difficult to demonstrate qualifications merely at an interview, the Parties expressly [provide] in Rule 17 that an applicant, as above noted, has a right to a “reasonable trial to prove his qualification.... The Board finds that Claimant’s right, as an applicant for a vacancy, to “be given a reasonable trial to prove his qualifications” was violated and he is thus entitled to be promoted to the position, at least to the extent of being “given a reasonable trial to prove qualifications in said position.”

The Organization also argues that the Carrier has provided no documentation as to the test administered to Claimant or the results of the alleged test. Emphasizing that a candidate for a position is only required to demonstrate that he is qualified—rather than the most qualified—the Organization submits that if Claimant is qualified for the position, his greater seniority should allow him to displace Wilt even if Wilt is more qualified for the position. According to the Organization, Claimant’s being qualified for the WGL position has been demonstrated one day per week for the last eleven months. The Organization contends that Claimant should be permitted to displace Wilt and be placed in the Maintenance Department WGL position.

### **Opinion**

The Board recognizes that the required qualifications for the Maintenance Department



WGL position are specified in the bulletin for that position. As the Carrier correctly points out, those qualifications include working knowledge of (1) the Juniata Power Plant, (2) the Juniata Water Treatment Plant and related equipment, (3) the operation and repair of high voltage equipment and electronic control systems, and (4) 3-phase electrical generation and distribution systems. Additionally, required qualifications include familiarity with state and federal environmental regulations and policies. While it is undisputed that Claimant has acted as gang leader one day per week, the bulletin for the work he performs in this regard requires only general troubleshooting and repair of electrical equipment, and the ability to climb. The Board thus concludes that the work Claimant performs one day each week is not the same work he would be required to do in the Maintenance Department WGL position.

The Board further finds that the Organization's reliance on Rule 17 is misplaced. Rule 17 addresses the procedure for ensuring an applicant is qualified for a new or vacant position by permitting a trial period. It is not applicable to the facts here, where Claimant seeks to exercise seniority into a position already occupied by a qualified employee. The Carrier therefore was not required by Rule 17 (E) to provide Claimant a reasonable trial of up to five days. Rather, as expressly addressed by Appendix L, an employee seeking to obtain a position *subject to a pay differential*—as in the instant case—may be required as a prerequisite to establish his qualifications through an examination or test. The Board is persuaded that the Carrier properly required Claimant to take such a test to determine his qualifications for the Maintenance Department WGL position. While the Organization asserts that no evidence was presented of the test or Claimant's answers that disqualified him, the Board is satisfied that the Carrier designed an appropriate test and that Claimant was unable to demonstrate at least a working knowledge of the Juniata Power Plant, the Juniata Water Plant, the pertinent state and federal environmental



regulations, and the way all of those things work together. There is no Record evidence of any motivation the Carrier might have had to design and administer a test to intentionally disqualify Claimant, and the Board rejects the Organization's assertion in this regard.

The Board concludes that the Union has not proved any violation by the Carrier in the procedure it adopted to determine Claimant's qualifications for the Maintenance Department WGL position. The claim therefore is denied. However, the Board is mindful that the Record suggests there may a significant level of confusion on the shop floor as to what may be required of an employee seeking to exercise seniority to bump into a position with a qualification requirement, and what may be required of an employee seeking to bid into a vacancy or new position. It thus may be prudent for the parties to discuss the issues raised by this case.

**Award:**

The claim is denied.

Joan Parker

JOAN PARKER  
Neutral Member

Jan Cett

CARRIER MEMBER

DATED: 08/02/2022

Tom Owens

ORGANIZATION MEMBER

DATED: 08/01/2022