

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Cincinnati, New Orleans and Texas Pacific Railway Company

Dispute: Claim of Employees:

1. That Carman G. T. Montgomery, Danville, Kentucky was unjustly disqualified as a derrick operator.

2. That accordingly the Carrier be ordered to lift Mr. Montgomery's disqualification as derrick operator and that he be allowed to operate the derrick in accordance with his seniority and requirements of service at Danville, Kentucky.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant received the following letter from Carrier's Master Mechanic under date of May 31, 1979:

"After observing your operation of the Danville derrick on the recent derailment on the Tennessee Railroad, I find you not qualified to run the derrick; and by this letter I am disqualifying you herewith."

The Claimant was not a regularly assigned Derrick Engineer. There is some dispute as to the degree which he operated a derrick on a temporary basis while assigned to derrick crews in 1973 and 1974. Three instances of service as a Derrick Engineer were cited in 1978 and 1979, inclusive of the one on which he was disqualified.

The Organization argues that the Claimant's performance on the last instance was satisfactory, in view of the unusual circumstances involved in replacing bridge spans. The Carrier, however, cites the judgments of three different supervisors as to the Claimant's lack of progress and operating inadequacies on this and previous occasions.

With this background the Board finds no rule or circumstance to diminish the well understood right of the Carrier to determine the qualifications of an employee for operation of a derrick. The position involves to an unusual degree the safety of other employees and the high possibility of damage to equipment and property. There is no showing here that the Carrier acted in an arbitrary, capricious or discriminatory manner in exercising its judgment that the Claimant was not qualified after training and a limited amount of experience.

To this same effect is Third Division Award No. 18696, among many others. That Award states in pertinent part as follows: .

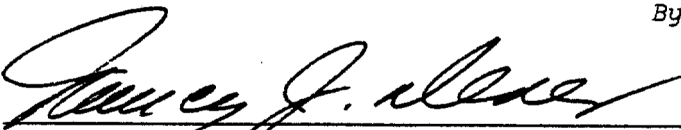
"It is axiomatic that Carrier has the discretion and prerogative to determine the fitness and ability of an employee, unless contractually restrained. It is also generally accepted that Carrier's discretion of matters of determination of fitness and ability will not be disturbed unless Carrier has acted arbitrarily and capriciously."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 18th day of January 1984.