

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21951
Docket Number CL-21466

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station **Employees**
{
{ (Chicago Union Station Company

STATEMENT OF CLAIM: **Claim of** the System **Committee** of the Brotherhood,
GL-8003, that:

1. The Carrier violated the effective Clerks' Agreement when it arbitrarily and capriciously disqualified Roman Brach **from** the position of Relief Tractor Operator - Nail Handler, Position #154 effective June 6, 1974.

2. The Carrier shall now be required to compensate Hr. Roman Brach for eight (8) hours' pay at the pro rata rate of Relief Tractor Operator - Mail Handler Position #154, which is in addition to any compensation he may have **already** received, commencing with June 7, 1974, and continuing for each and every day thereafter, five days per week, Thursday through Monday that the Carrier fails and refuses to **permit** him to **work** position of Relief Tractor Operator - Main **[sic]** Handler Job #154.

3. The Carrier shall now be required to **compensate** Mr. Roman Brach at the rate of time and one-half for **all** service performed outside the assigned hours and work week of Position #154, less **compensation** already paid for such time commencing on June 7, 1974 and continuing for so long as a like violation occurs. Such time to be determined by a joint check of the Carrier's records.

OPINION OF BOARD: The Claimant is an employe who has approximately 22 years of service with the Carrier, primarily as a mail handler. Due to the abolishment of several positions, the Claimant was unable to hold a nail handler's position with the hours he desired. He therefore exercised his seniority to Position #154 which required that he work two days as a mail handler and three days as a tractor operator. Since the Claimant had never held a tractor operator's position in the past, the Carrier assigned Mr. R. J. Palmer, a qualified tractor operator, to instruct the Claimant how to operate Carrier's tractors. The Claimant worked this assignment for four days -- **two** days as a mail handler and **two**

days as a tractor operator, which included ten hours actually operating the tractors. He was then required to take a test, conducted by Lead Mechanic N. A. Vensetto, to qualify as a tractor operator. On June 7, 1974, the Claimant was advised that he was disqualified from Position #154. He subsequently requested a hearing relative to his disqualification which hearing was held on August 8, 1974.

It is the Organization's position herein that when the Carrier disqualified Claimant from Position #154, they acted in an arbitrary and capricious manner. They assert that Claimant was not given full cooperation by the Carrier as required by Rule 16(c) inasmuch as he was not allowed sufficient time to learn how to operate Carrier's tractors. The Organization avers that Claimant should have been given more time to demonstrate his fitness and ability for the position in question.

It is universally accepted in this industry that management retains the right to determine the fitness and ability of its employees. In making this determination, however, management cannot act in an arbitrary or capricious manner. The issue that must be decided here is whether the Carrier acted in an arbitrary or capricious manner when they disqualified the Claimant from Position #154. A careful examination of the record before us compels this Board to conclude that the Carrier did not act arbitrarily, capriciously or unreasonably when they determined that the Claimant could not properly perform the duties of Position #154.

At the August 8, 1974 hearing, Lead Mechanic Vensetto testified that he disqualified the Claimant due to the Claimant's inability to stop the tractor without first getting up off the tractor seat. When a driver removes himself from the seat, the tractor's emergency brakes apply. However, it is against the Carrier's rules to stop the tractor in this manner in situations other than an emergency. The normal procedure is to apply the foot pedal which the Claimant was unable to do apparently because of his physical stature (5', 3", 120 lbs.). Mr. Vensetto observed the Claimant for approximately one hour during which time the Claimant was unable to stop the tractor by using the foot pedal. Carrier concluded from this that no amount of training could overcome this deficiency. They discerned that Claimant would never be able to properly operate a "Parker" tractor, one of the tractors that the incumbent of Position #154 was required to operate. Allowing the Claimant to operate this tractor would, in Carrier's opinion, pose a safety hazard not only for the Claimant but for his fellow employees as well. In reaching this conclusion, it is the considered judgment of this Board that the Carrier did not act in an arbitrary, capricious or unreasonable manner.

While it is certainly true that Claimant could satisfactorily operate a "Mercury" tractor, it is **equally** true that he could not properly apply the brakes on a "Parker" tractor. However, the facts evidence that Carrier's tractor operators are required to operate **all** the tractors used by the Carrier. They are not assigned specific tractors. Accordingly, when the Carrier disqualified Claimant because he could not safely operate the "Parker" tractor, they did not act arbitrarily or capriciously. There is no support for the instant claim and it **must** be denied as a result.

FINDINGS: The Third Division of the **Adjustment** Board, upon the whole record and all the evidence, finds and holds:

That the **parties** waived **oral** hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, **1934**;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of **March** 1978.