

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23016
Docket Number MW-23069

Rodney E. Dennis - Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The discipline imposed upon Machine Operator R. L. Peyton was without just and sufficient cause and on the basis of unproven charges (System File B-990).

(2) The disciplinary demotion of Machine Operator R. L. Peyton shall be rescinded and he shall be allowed the difference in what he received at the laborer's rate and what he should receive at the ballast regulator's rate beginning July 18, 1978."

OPINION OF BOARD: Claimant was a machine operator in carrier's track department at Birmingham, Alabama. On July 18, 1978, claimant was disqualified as a ballast regulator operator. Carrier gave two reasons for his disqualification: (1) his failure to keep up with the tie gang when operating the machine, and (2) his colliding with a spike-master machine that was working ahead of him. This occurred on July 18, 1978, while claimant was operating a machine near mile post R - 799.

The general chairman of the organization requested a formal investigation. It was conducted on September 26, 1978. A transcript of that hearing has been made a part of this record. A review of the transcript reveals that a full and fair hearing was held and that claimant, as well as his representative, had ample opportunity to be heard and to ask questions of other participants in the hearing.

A review of the record also reveals that carrier had justification for disqualifying claimant as an operator. The record clearly establishes that claimant did have a problem keeping up with the other workers and machines on the job. It is also clear that claimant was responsible for running into another machine. The record establishes that claimant was not in complete control of his machine and was operating it when it needed a brake adjustment. Claimant is responsible for both incidents. Carrier has every right to expect that employees will operate machinery in a competent and safe manner. If they do not, carrier has the right to disqualify them and demote them, as was done in this case.

But while the board thinks that carrier was justified in disqualifying claimant in July 1978, it is not persuaded that claimant should forever be **barred** from **seeking** another **promotion** to machine operator. The **board, therefore,** finds the following:

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

Disqualification end demotion shall **stand as issued.** Claimant, **however,** shall be allowed to bid on machine operator's jobs, if and when **they** become available.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: _____


Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.