

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23516
Docket Number MW-23480

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Colorado and Southern Railway Company

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

(1) The disqualification of John Martinez as crane operator on March 12, 1979 was without just and sufficient cause (System File C-11-79/MW-408).

(2) Mr. John Martinez be reinstated as crane operator and be allowed the difference between what he would have received at the crane operator's rate and what he was paid at the laborer's rate from March 12, 1979 until he is returned to work as a crane operator with seniority as such unimpaired."

OPINION OF BOARD: It: this dispute the basic issue before this Board is whether the supervisor in charge of Claimant's work activities during the 30 day trial period produced sufficient evidence to demonstrate claimant's inability to qualify for the position of Welding Plant Crane Operator, at the Rail Welding Plant in Pueblo, Colorado.

Claimant was awarded this position on February 1, 1979 on a 30 day trial basis, pursuant to the requirements of Rule 10(e) of the controlling Agreement and officially assigned to the position on February 12, 1979. He was also provided a six day break in period prior to February 12, 1979. On March 12, 1979, he was apprised by the Plant Supervisor that he was deemed unqualified for the position and was returned to his former position as a Laborer, effective March 13, 1979. He appealed this determination.

In defense of his petition, he contends that he comported with the essential performance standards of the position and challenges Carrier's contention that sufficient evidence was adduced to warrant his disqualification. He argues that he was not properly supervised and trained during the trial period as required by Rule 10(e) and that the rail damage which occurred when he operated the crane was normative for this type of work.

Carrier argues that he was unable to handle effectively the responsibilities of the crane operator's position, even under less than normal working conditions and demonstrated no improvement in his work. It argues that he experienced continuous problems handling the crane, despite sustained supervisory

and ancillary assistance, but that he ~~was~~ unable to achieve the position's required proficiency level. Specifically, it asserts that because of his ~~mis-~~ handling of the crane, excessive rail ~~damage~~ occurred which was not only unacceptable and costly, but potentially dangerous to the safety of other workers. It avers that Rule 10(g) vested it with exclusive authority to determine ~~fitness~~ and qualifications standards and that it exercised this right ~~responsibly~~ and consistent with the intended spirit of Rule 10(e).

In our review of this case, we concur with ~~Carrier's~~ position. The record clearly shows that Claimant was afforded ample opportunity ~~and~~ active supervisory assistance to qualify for this position, but that he was unable to meet the ~~performance standards~~. From the ~~inception~~ of his trial ~~assignment~~, he ~~manifested~~ a consistent inability to ~~acquire~~ the competency skills needed for ~~this position and caused~~ considerable ~~rail damage~~ when he operated the crane. He had difficulties in unloading rail ~~cars~~ and keeping ~~the~~ rail racks properly stockpiled and responded slowly to ~~ground crew~~ signals. There is no evidence that ~~Carrier~~ was remiss in providing hi adequate training or cooperative assistance and the quantitative ~~data~~ submitted by Carrier pointedly depicts a continuous level of ~~underperformance~~, which justified his eventual disqualification. Carrier provided him a reasonable opportunity to qualify ~~for the Crane Operator's position~~, and it did not abuse its ~~decisional~~ prerogative, when it disqualified him on March 13, 1979.

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;

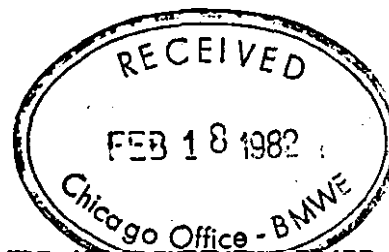
That the ~~Carrier~~ and the ~~Employees~~ involved in this ~~dispute~~ are ~~respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;~~

That ~~this~~ Division of the ~~Adjustmer t~~ Hoard 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. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.