

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24786
Docket Number MW-24622

George V. Boyle, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Houston Belt and Terminal Railway Company

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

(1) The Carrier's disqualification of Machine Operator R. G. Gonzales as Burro Crane Operator on July 17, 1981 "as improper and without just, sufficient or reasonable cause.

(2) Because of the aforesaid violation Mr. R. G. Gonzales shall be allowed the difference in what he received as a track laborer **and** what he should have received as a Crane Operator beginning July 20, 1981 and continuing until he is restored to his position as Burro Crane Operator."

OPINION OF BOARD: The Claimant is a long term employee who had **been** assigned to the position of Burro Crane Operator. **He** had performed this job satisfactorily for about 2 1/2 years while a "**Pilot**" was assigned to accompany him and direct his duties. With the signing of a new agreement, it "as determined that a "**Pilot**" "as not required **and** each equipment operator "as given an examination with reference to the job requirements.

At this time it "as determined that the Claimant could not read or write English, had difficulty understanding oral instructions, and his score on the examination "as zero. Since instructions **were** given only in English and safety as well **as** efficiency "as a prime consideration the Carrier disqualified the Claimant and retired him to his former position of Laborer.

On behalf of the Claimant, the **Employees** allege that he should not have been disqualified at this time since, in accordance with the agreement he is qualified, having been promoted by the Carrier and had satisfactorily **performed** his duties for over **two (2)** years. Moreover, they assert that Rule 10 provides that a promoted **employee** must be disqualified within thirty (30) days, not at any later date after **he** has proved himself.

Rule 10 reads as follows, in part:

"A. Promotions shall **be** based on ability, merit, fitness and seniority. Ability, merit and fitness being sufficient, seniority shall prevail, the management to be the judge, subject to appeal . . .

D. Employees, accepting promotion and failing to **qualify** within thirty (30) days, may return to their former position without loss of seniority, but without establishing seniority in the classification from which **disqualified**."

While, in the opinion of the Board, the Claimant has demonstrated satisfactorily his ability to operate the equipment **in** question he has failed to show that he can continue in that capacity. Bad conditions remained stable, with the **assistance** of a Pilot, **there** would have been no need for him to operate alone and to receive instructions and directions on his own. But operating exigencies caused a change which exposed the Claimant's deficiencies in this regard.

Conceivably with time and effort the Claimant might master the English language sufficiently to enable him to operate safely and efficiently. Compassionately, the Carrier could afford him **another** opportunity to take the test and, if qualified, to reinstate him in his former position. If he still fails to qualify his demotion would stand. Since it is now two and one half (2 1/2) years since the Carrier disqualified him, in the interim, he may have acquired the language proficiency required.

Accordingly we will remand the case to the Carrier for disposition in accordance with the aforesaid.

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

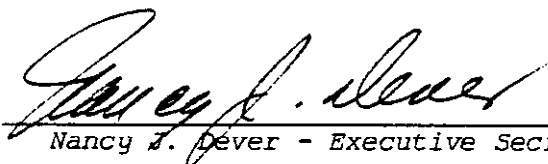
That the claim is disposed of in accordance with the Opinion.

A W A R D

The Claim is Remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984

