

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25197

Docket Number MS-25386

James Robert Cox, Referee

(F. S. Trevizo

PARTIES TO DISPUTE:

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. Whether I was dismissed from the service of the Union Pacific Railroad Company in violation of Rule 48 of the BMWB Schedule Agreement and assessed a **90-day** suspension as the result of alleged insubordination for failing to operate speed swing crane PSS-83, when ordered to do so by supervisor **J. W. KELLY**, when I had already been given general instructions by general foreman G. Moreau, to operate the **DTL-78** machine, and whether I am entitled to pay for all the time lost while serving the **90-day** suspension.

2. Whether Union Pacific violated Rules 1, 15, 15(d), 20, and 20(e) of the BMWE Schedule Agreement, when on January 7, 1982, When junior employee B. Westley was awarded the REO-ATC **CL#1** operator's position, instead of me, when I have a seniority of July 17, 1967 and am qualified to operate the machine while Westley only has a **seniority** date of March 4, 1981, and whether I am entitled to be compensated for the difference' between the ATC-3 CL #1 position of pay and my DTL-78 rate of pay.

OPINION OF BOARD: June 17, 1982, Claimant Trevizo was working on Extra Gang 5982 as a Roadway Equipment Operator at **Yermo**, California.

Claimant argues that he was improperly removed from service under Rule 48 of the BMWB Schedule Agreement before a Hearing was held since he had not refused to work but continued to operate the DTL-78 Machine he had been previously instructed to run by General Foreman Moreau instead of following the direction of Foreman Kelly to operate the PSS-83 Machine.

When Claimant initially came to work that morning, he had informed Foreman Kelly that he was not going to run two machines anymore. He asserted that he was to be assigned to one machine and that was the machine he was going to operate. The Foreman testified Trevizo told him that he had been assigned by General Foreman Moreau to smooth the roadway, taking panels out between tracks 6 and 8.

Foreman Kelly stated that **Holman** first asked Trevizo to operate the Speed Swing about **9:15 A.M.**, his response was that he was grading the roadway and **was** not going to operate the Speed Swing.

Staff Engineer **Holman**, who replaced vacationing General Foreman Moreau that day, said that when he asked Trevizo if he would run the Speed Swing **PSS-83**, Trevizo refused, commenting that he no longer **"liked to run"** the Speed Swing. There is no claim that Claimant was unqualified to run the Crane. A short time thereafter, **Holman** returned again, repeated the order and Trevizo again refused. The Carrier needed the Speed Swing Crane to facilitate the replacement of two rails. No other qualified Operator was available.

Having a qualified Operator operate more than one machine during a work day was not unusual and in fact had been frequently done, according to the evidence.

Trevizo admitted that he refused to run the Crane "because I had a lot of work to do" and acknowledged that he understood that **Holman**, as a Supervisor, had given him an order and that he had a responsibility to operate any machine a Supervisor asked him to operate so long as he was qualified.

Claimant also conceded that he was working under the direction of Kelly and that, when Kelly told him to run the Speed Crane, he told him he was not going to **run** it because he had work to do on his machine and was tired of running both machines for a long time -- "that I wasn't very secure running both machines at the same time; that I thought it was unsafe for me to be running both machines at the same time... for months I have been running both machines...." **He** contends he told **Holman** something different -- that he could not run the Crane because that machine was not his responsibility and he had work to **do** with his Front-end Loader.

The evidence indicates that Claimant refused three separate requests to operate the Crane. He refused to perform the work as assigned giving different reasons for such refusal as the disciplinary process continued. Claimant's refusal to follow a work assignment was clearly a refusal to work within the meaning of Rule 48. There is insufficient evidence that running two machines, a task Claimant had been performing by his own admission for about four months, was an unsafe practice. **Trevizo** had an obligation to perform the work assigned and then grieve. Under these circumstances we find that the Carrier had just cause for the suspension.

Trevizo's second claim involves his application for the position of Operator of a Hydraulic Rough **Terrain** Truck Crane, **ATC-3CL#1**, a job awarded to a less senior **employe** -- Mr. Westley -- January 7, 1982.

Claimant argues that even if he were not qualified, since he was the **most** senior applicant, **he** should have been temporarily assigned to the position for thirty days under Rule 20(e). Moreover, he asserts that he was "**better** qualified" than Westley since he, not the junior man, had qualified to run machines similar to the **ATC-3CL#1**.

Under Rule 10(b) **employes** applying for the position of Operator within the Roadway Equipment Sub-Department will not be assigned until "considered qualified by the Supervisor of Work Equipment". The evidence did not establish any basis for a determination that Claimant was qualified for the position he sought. Only where there is a reasonable expectation of qualification should an applicant be temporarily assigned under 20(e).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

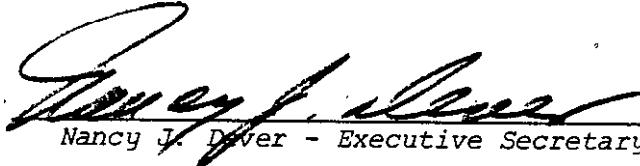
That the Agreement was not violated.

A W A R D

Claim denied.

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

Attest:



Nancy J. Dover
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 11th day of January 1985.