

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 26289
Docket Number MW-25980

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of **Way** **Employes**

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The disqualification of Mr. G. W. **Hughson** as ballast regulator operator **on June 10, 1983** was improper, without just, sufficient or reasonable cause (System File **C-M-1826/MG-4117**).

(2) The Carrier shall return the claimant to the position of ballast regulator operator for at least three (3) days under the supervision and instruction of a qualified ballast regulator operator for the purpose of qualifying on said machine and he shall be allowed the difference between what he would have been paid at the Class A Machine Operator's rate and what he was paid at the trackman's rate beginning June 8, 1983 and continuing until he is afforded a fair opportunity to qualify as a ballast regulator operator."

OPINION OF BOARD: Claimant, a Class A Equipment Operator, had been displaced from his position on June 6, 1983. Following a" alleged argument with a Carrier Officer, Claimant **was** permitted to displace **a** junior equipment operator who was operating a Ballast Regulator. Claimant, even though he had operated a Tamper had "ever previously operated a Ballast Regulator. He was disqualified by three Carrier Supervisors on the third day of his assignment, triggering the dispute herein.

Petitioner argues that Carrier failed to afford Claimant a reasonable opportunity to qualify on the Regulator. It is contended that he was given less than eight hours time before being disqualified while the Rules provide that he should have been given three days. Carrier, on the other hand maintains that Claimant had been given ample opportunity to learn to use the equipment, with the assistance of an experienced operator, and failed to qualify. Carrier insists that Claimant was properly disqualified in accordance **with** Rule 13(d).

It is well established that Carriers have the right to determine the fitness and ability of a" **employee** for a position; further such evaluations **will** not be overruled unless it **can** be shown that Carrier was arbitrary or capricious in its determination. In addition, it must be show" by Petitioner by substantial probative evidence that Claimant possessed the necessary ability for the position sought. In the instant dispute, from the evidence produced during the handling of the matter on the property, the Organization

has not supplied proof that Claimant had **the necessary** ability, that he was not afforded ample opportunity under the Rules to demonstrate his ability, or that Carrier's determination was flawed and can be considered to have been arbitrary or capricious. In short, Petitioner has not borne its burden of proof.

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

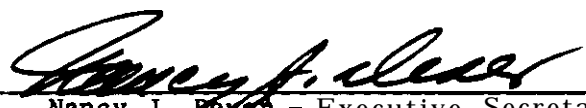
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.