

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Agreement was violated when the Carrier disqualified Claimant G. Smith as a Group 7, Class 2 machine operator on January 15, 1986 (System File 100-8-862/11-1740-40-59).

(2) The claimant shall be reinstated on the Group 7, Class 2 machine operator seniority roster and he shall be compensated for all wage loss suffered because of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As of January 6, 1986, Claimant was used to protect a temporary vacancy on a Model 46 Kershaw Ballast Regulator. At the time, Claimant held seniority as a Group 7, Class 2 machine operator and as a Group 3 trackman. The Model 46 Kershaw Ballast Regulator is one of numerous machines operated by Group 7, Class 2 employees. On January 15, 1986, the Roadmaster sent Claimant a wire stating:

"G. Smith is unable to operate Ballast regulator properly nor meet maintenance standards therefore will not be allowed to operate."

No copy of this message was sent to the General Chairman.

The following Agreement Rules are to be considered:

"RULE 8 - PROMOTIONS, ASSIGNMENTS & DISPLACEMENTS

8 - (c) - Failure to Qualify.

An employe who accepts promotion to a higher class but fails to satisfactorily perform the duties of the higher class within twenty-five (25) work days will be disqualified. This employe will return to his former position in accordance with Rule 5. All employes affected thereby will be governed by Rule 5.

An employe who is assigned more than twenty-five (25) work days to a position will be considered qualified.

An employe who fails to pass the examination(s) or who is otherwise disqualified, shall be advised promptly in writing, with copy to the General Chairman, as to the cause or causes of his failure to qualify."

On August 25, 1984, the following Note was added to Rule 8(c) by the parties:

"An employe disqualified under the provisions of this rule after having been assigned more than twenty-five (25) work days to the position, may, within 20 days following notification of disqualification, request a formal investigation. If the employe requests a formal investigation and a claim is filed for restoration of his rights, it will be handled as a discipline case."

"RULE 10 - POSITIONS UNDER ADVERTISEMENT AND UNBULLETINED TEMPORARY VACANCIES

10 - (a) - Vacancies on Positions Under Advertisement and Temporary Vacancies of Thirty Calendar Days or Less as Described in Rule 37-(f). Except as set forth in NOTE below, vacancies on positions under advertisement and temporary vacancies of thirty calendar days or less, that are to be filled, shall be filled by the senior qualified employe of the class working on a lower rated position or furloughed who

desires to protect the vacancy. If there are no employees of the class who desire to protect the vacancy, the vacancy may be filled by either setting up the junior employee of the class who is working on a lower rated position or by promoting an employee of a lower class, pursuant to Rule 8.

NOTE: Vacancies on Track Foreman positions under advertisement and temporary vacancies of thirty calendar days or less; that are to be filled, shall be filled in the following sequential order:

(1) By the senior employee of the class at the location where the vacancy occurs, who is working on a lower rated position or furloughed."

In its Claim, the Organization contended Rule 8(c) applies and, accordingly, notice of disqualification should have been given the General Chairman. On April 25, 1986, Carrier responded:

"The Carrier did not violate the provisions of Rule 8(c); nor is said rule even applicable in the instant case. This for the reason that the claimant was merely removed from operating the aforementioned machine; he was not 'disqualified' as a Class 2 Operator.

Inasmuch as the claimant had previously qualified on the Model 23 Kershaw Ballast Regulator, it was felt that he also could operate the Model 46 Kershaw Ballast Regulator for which reason he was initially assigned to operate the referred-to machine pending the bulletining thereof. However, when it became obvious to the claimant's supervisor that he was unable to operate the machine in a proper manner and handle the maintenance work involved, he was removed therefrom."

We agree with Carrier that Rule 8(c) does not apply. The Rule requires notice in cases of disqualification of a promoted employee. Here Claimant was not promoted. Rather, a vacancy under advertisement was being protected under the provisions of Rule 10. Claimant retained his Group 7, Class 2 seniority. Read in its entirety, Rule 8(c) does not require notice in instances of disqualification from operation of specific equipment within a category where no promotion is involved.

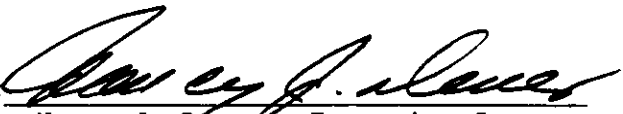
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Award No. 28025
Docket No. MW-27820
89-3-87-3-333

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.