

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28554  
Docket No. MW-27179  
90-3-86-3-386

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis Southwestern Railway Company

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

Machine Operator James Iverson, Jr. shall be compensated for all wage loss suffered beginning with June 7, 1985 and continuing until he is returned to his position as machine operator with seniority as such restored and unimpaired because of the Carrier's failure to hold and conduct an investigation in compliance with the procedural requirements of Article 14 (A) 1 (System File MW-85-39-CB/53/844)."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Claimant was disqualified as a Machine Operator effective May 8, 1985, for his involvement in an accident with an automobile at a road crossing. The Claimant was operating a Ballast Regulator at that time. In a separate notice, the Claimant was withheld from service and issued a thirty (30) calendar day suspension. The Organization argues the two actions acted to deprive the Claimant of a fair and impartial hearing as required by Article 14. In effect, the Organization contends the suspension and disqualification form discipline which must be considered to be in excess of thirty (30) days.

Revised Article 14(a) 2 reads as follows:

"An employe who has been in service in excess of sixty (60) days may be disciplined by the assessment of demerits or suspension not to exceed 30 days and will be advised of the cause of such action in writing within 10

days. An employe thus disciplined may, upon making a written request within 10 days to the officer authorized to receive same, be given a fair and impartial investigation by an authorized Carrier officer. If no request for investigation is received, the discipline will be considered as accepted."

The record reveals the Claimant did not, as required under revised Article 14, request an Investigation. Analysis of the Organization's position that the imposition of a suspension coupled with disqualification somehow voids the clear language of revised Article 14 is without support. Accordingly, the Claimant must be viewed as having accepted the thirty (30) calendar day suspension.

On May 16, 1985, the Carrier's Regional Engineer advised the Claimant he was disqualified as a Machine Operator. Article 48, Unjust Treatment, states:

"An employe who considers himself unjustly treated, other than covered by these rules, shall have the right of conference with an officer of the department assisted by one or more duly accredited representatives, provided a written request setting forth his complaint is made to his immediate supervisor within sixty (60) days of the cause of complaint. Failing to dispose of the complaint in such conference, appeal may be taken in accordance with Article 15."

From the above, it is evident that if the Claimant believed his disqualification was unjust, he could have requested a conference as provided for in Article 48. The Claimant did not. In the interim, a considerable period of time has passed, and this Board believes the disqualification will clearly have served its purpose. Accordingly, the Board directs the Carrier to rescind the Claimant's disqualification with notice to the Claimant. However, the Claimant is advised that it has been previously held that the Carrier is the sole judge of an employee's ability to qualify for promotion as well as to judge an employee's ability to continue in such a position.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.