

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30204
Docket No. MW-28513
94-3-88-3-325

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company
(former Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when the Carrier disqualified Mr. R. W. Hobbs as a machine operator on the Burro Crane BC-37 on the Desoto Subdivision effective February 9, 1987 (Carrier's File 870572).
- (2) As a consequence of the aforesaid violation, Mr. R. W. Hobbs shall be allowed:

'...pay at the Machine Operator rate of pay for February 10, 11, 12, 1987, and mileage at 21¢ per mile for a total of 300 miles per day from February 13, 1987, until he is returned to the BC-37 and allowed to operate it as his seniority would allow.' "

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 employe 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 a result of an exercise of seniority, Claimant contacted Carrier's General Roadmaster in January 1987 and indicated that he wanted to displace the incumbent on a Model 40 Burro Crane. The Roadmaster advised him that he was not qualified to operate the Burro Crane and therefore he would not be allowed to displace the incumbent operator. However, the Roadmaster agreed to provide Claimant two weeks to learn how to operate the machine and demonstrate his ability to perform the job.

Carrier officials concluded after observing the Claimant on February 9, 1987, that he was not qualified to operate the Burro Crane. According to the Carrier, Claimant had difficulty in some of the crane's operations and perhaps more importantly was not conversant with the applicable rules for operating this type of equipment.

The Organization contends that Claimant holds seniority as a machine operator and there is no provision in the agreement which requires employes to requalify in exercising their seniority on another machine. Likewise, Carrier has never required employes to submit to questioning or examination in order to qualify for a given assignment in the machine operator class. In so doing in the instant case, the Organization contends that Carrier's actions were arbitrary and capricious. In addition, the Organization disputes the Carrier's determination that Claimant was not qualified to operate the burro crane. It points out that two employes who worked with and trained Claimant to operate the crane submitted statements on the property attesting to his skill and demonstrated ability in the performance of this work. For these reasons, it is the Organization's position that this claim should be sustained.

Carrier insists that a machine operator, like any other employee, must be qualified in order to displace on a piece of equipment or a machine. Only when an employee is qualified does seniority come into play in accordance with the provisions of the Agreement. In this case, Carrier submits, its determination that Claimant was not qualified can hardly be deemed arbitrary or capricious. Claimant was given the opportunity to learn to operate the crane and become familiar with the safety rules necessary for its operation. He did not do so. Carrier argues that the matter of determining an employee's qualifications to perform the work of a particular assignment or a position is the prerogative of Management, and the Organization has been unable to prove in this case that Carrier's actions constituted an Agreement violation.

The Board concurs with Carrier that whether an employee has sufficient fitness and ability to fill a position or operate a machine is a matter of judgment that is managerial prerogative. Unless the Organization can prove that the Claimant was competent to perform the position involved or that Carrier acted in a biased or prejudicial manner in evaluating the Claimant's competency, the decision of the Carrier must be final. See Third Division Awards 6054, 6178. It is also a well-established principle that Carrier can ask the employee to demonstrate fitness and ability, either by examination or on-the-job demonstration, and provided the test is fair and work-related, the Board will not interfere with Carrier's determination. (See Public Law Board No. 2035, Award 9)

Applying those principles to the instant case, we find no basis in the record which would warrant sustaining the Claim. Contrary to the Organization's contention that seniority alone is controlling when displacing a junior employee, Rule 2(g) makes clear that the senior employee must also be qualified for the position in order to bump the incumbent:

"(g) Foremen, mechanics, helpers, and employees of like rank in other departments who are subject to the provisions of this agreement, after having exhausted their rights in the class in which employed, shall have the right to drop back to the next lower classification in line with their seniority in that classification. To be entitled to drop back to the next lower classification and retain seniority in the higher classification the employe must have exhausted displacement rights over junior employees in the higher classification if qualified for the position held by the junior employe (an employe may not disqualify himself), otherwise if he exercises seniority in a lower classification he will forfeit seniority in the higher classification. Employees who retain seniority in a higher classification under this rule and who are occupying a position in a lower classification will be subject to assignment by bulletin per Rule 11 to positions in the highest classification available in line with their seniority, and failing to respond to notice of assignment within seven calendar days will forfeit seniority in the higher classification." (Underscoring added).

Thus, even though Claimant is a Machine Operator for purposes of classification, it does not necessarily follow that he can automatically exercise his seniority to operate any piece of equipment within the large inventory of equipment and machines maintained by the Carrier. He must possess the necessary qualifications to operate the equipment in accordance with Rule 2(g).

Here, Carrier permitted Claimant to demonstrate his qualifications to perform the requisite duties of a Burro Crane operator and he failed to qualify. We are hardly in a position to find arbitrary or capricious Carrier's determination that Claimant was unfamiliar with safety and operating rules necessary for the operation of this piece of equipment. Moreover, the evidence submitted by the Organization in the form of statements by fellow employees who worked with and trained Claimant on the Burro Crane does not refute that critical safety consideration.

As a final note, it should be emphasized that our findings and conclusions in this case are based solely on evidence and argument submitted by the parties during the handling of this case on the property. Based on that evidence, we find that the Organization has fallen short of carrying its burden of persuading this Board that the Agreement was violated in the instant case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.