

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30274
Docket No. MW-29815
94-3-91-3-170

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., 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 failed and refused to permit Machine Operator G. Atkinson, Jr. to displace junior Machine Operator F. Trevino on Speed Swing SS8903 at Angleton, Texas on December 5, 1989 (Carrier's Files 900243 and 900244 MPR).
- (2) As a consequence of the aforesaid violation, Mr. G. Atkinson, Jr., shall be allowed compensation for all hours worked by Mr. F. Trevino on December 5 and 6, 1989, and he shall be compensated for the difference between what he earned as a truck driver and what he would have earned as the operator of Speed Swing SS8903 beginning December 10, 1989 and continuing until the violation is corrected."

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 employee 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 procedural matter, the Carrier states that the Organization has improperly combined two separate Claims into one Claim. The Carrier did not concur in such combination of the two related Claims, and the Carrier is correct in noting that the Organization has proceeded to the Board in an improper manner. While this could be grounds for dismissing the Claim as presented, the Board notes that the two Claims are directly sequential to each other. One concerns the Claimant's demand for pay for two days involved in his initial attempt to displace a junior employee, and the other concerns the Claimant's alleged loss of pay immediately thereafter. On this basis, the Board finds it appropriate to consider the matter on the merits.

The Claimant is a Machine Operator who sought to displace on a position as a Speed Swing Machine Operator. It is significant to note that this was a displacement and not an application to fill a bulletined position. The requirement is well established that an employee attempting to displace must be qualified in the position. This is emphasized by Rule 2(g), which otherwise concerns dropping back to a lower classification but which includes the requirement that an employee first must exhaust "displacement rights over the junior employee in the higher classification if qualified . . ." (Emphasis added)

In this instance, the Claimant was advised that he was not qualified for the Speed Swing Machine. Partly on his own initiative, the Claimant was able to undertake operation of the machine. Upon being observed for his five-hour period in such operation, the Manager of Engineering Maintenance again determined that the Claimant had not demonstrated that he was qualified to operate the machine. The right of the Carrier to determine employee qualifications is fully established, and there is no basis to find that this was done here in an arbitrary or capricious manner. In failing to accept the Manager's decision and to move promptly to some other assignment for which he was qualified, the Claimant occasioned his own loss of pay.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.