

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30284  
Docket No. MW-28954  
94-3-89-3-365

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 Machine Operator G. D. Weber was disqualified and removed from the position of machine operator on Jackson Tamper No. ATS-208J effective June 4, 1987. (Carrier's File 870916 MPR)
- (2) As a consequence of the aforesaid violation:

'\*\*\* time is claimed in behalf of Mr. Weber for eight (8) hours pay on June 8, 1987, plus meal allowance of \$9.75 for three days. Claim also for mileage of 20¢ per mile for 700 miles each weekend, and travel time in behalf of Mr. Weber, each weekend beginning July 11, 1987, and continuing so long as junior Operator Kottwitz fills position of operator on the ATS-208J to exclusion of Mr. Weber.' "

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.

On May 8, 1987, the Claimant was assigned by bulletin to the position of Machine Operator to operate an ATS (Production Tamper) machine. On June 4, 1987, the Claimant was given a one-sentence letter saying only "You have been disqualified as an operator on the Jackson Tamper." Subsequently, the instant claim was filed.

The Board has searched the record in vain to determine the basis of the Carrier's decision to disqualify the Claimant. Other than the mere pronouncement that he was not qualified, the record is bare. It is well established that assertions and opinion without supporting evidence are not sufficient to justify a disqualification. See Third Division Awards 12931 and 19432.

Given the state of the evidence and record, the Board is compelled to conclude that the Agreement was violated. The proper remedy is to pay the Claimant the difference in earnings between the Jackson Tamper rate and whatever rate he earned for any and all periods that junior employees in his district may have been employed as Jackson Tamper Operators. The Parties are directed to make a joint check of the records to determine the precise remedy or they may in lieu thereof reach an agreement as to the proper remedy. It is undisputed that the Claimant subsequently forfeited his seniority when he failed to respond to a recall. Therefore, the Carrier's liability will not extend beyond the date of such forfeiture.

AWARD

Claim sustained in accordance with the Findings.

Form 1  
Page 3

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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) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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