

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32366
Docket No. MW-31108
97-3-93-3-49

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Machine Operator H. Hinojosa ample time and opportunity to qualify on the BR36M at Taylor, Texas beginning November 20, 1991 (Carrier's File 920155 MPR).**
- (2) The Agreement was violated when the Carrier improperly disqualified Machine Operator G. Hinojosa without affording him ample time and opportunity to qualify on the BR44M on November 19, 1991 (Carrier's File 920154).**
- (3) As a consequence of the violation referred to in Part (1) above, Machine Operator H. Hinojosa shall be compensated for all wage loss suffered beginning November 20, 1991 and continuing until the Claimant is allowed sufficient time and opportunity to qualify on the BR36M.**
- (4) As a consequence of the violation referred to in Part (2) above, Machine Operator G. Hinojosa shall be compensated for all wage loss suffered beginning November 19, 1991 and continuing until the Claimant is allowed sufficient time and opportunity to qualify on the BR44M."**

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 were given due notice of hearing thereon.

This dispute originated as two separate claims, however, the claims were combined and submitted as one case before this Board.

The first claim involves Herbert Hinojosa (Claimant) who was working as Machine Operator on Gang 9165, Tie Inserter Machine. Claimant was cut off from his Machine Operator position effective November 4, 1991. On November 13, 1991, Claimant attempted to exercise his seniority and displace the junior incumbent on a ballast regulator on Gang 2253 at Taylor, Texas. However, because Claimant had not qualified for the position to which he was bumping, Carrier held a qualified Operator on the job to train Claimant.

Claimant trained on said position on November 13, 14, 18, 19 and 20, 1991. After reviewing the Claimant's work, however, Supervisor J. Miller found that he had not met necessary qualifications on the ballast regulator, and advised his displacement was being denied because he was not qualified on the machine.

With regard to the second claim, Guadalupe Hinojosa trained on the BR36M November 6 and 7, 1991 and was allowed to bump junior employee Crawford. When Jose Cisneros bumped the Claimant, Claimant again attempted to bump Mr. Crawford, at which time Carrier advised him that he was not qualified and would not be permitted to displace onto the position.

The Organization progressed a claim maintaining that Claimants held Machine Operator seniority, and were not given "ample opportunity" to qualify for the positions. Specifically, the Organization asserted:

1. Carrier violated Rules 1, 2 and 10 of the controlling Agreement when it disqualified the Claimants as Machine Operators.
2. The Carrier failed to present any valid reason or any reason of substance for its disqualification of the Claimants as Roadway Machine Operators.
3. The dispute involves the Carrier's allowance of both Claimants to exercise their seniority rights in recognition of their qualifications and seniority as Roadway Machine Operators, and then days later disqualifying them under the pretext that they failed to qualify to operate the machine.
4. The Carrier's ploy to prevent a change in a gang's consist of employees should not be allowed to stand.
5. This dispute involves the Claimants' classification as Machine Operators and the work of operating a machine (ballast regulator) within the classification of roadway machines.
6. Agreement Rules are superior and take precedent over Carrier's operating rules.
7. The Agreement does not grant the Carrier the unilateral right to designate an individual employee to operate a particular machine and to disqualify all others from operating that particular machine.

Carrier denied the claim noting that each Claimant was given the opportunity to "break in" on the machine for an appropriate time period, with the "old operator" still working the machine and training Claimants. Carrier further noted that it does not have to accept a displacement unless the individual is qualified. In that connection,

Carrier noted that when Superintendent Lopez asked Claimant Guadalupe Hinojosa if he knew how to operate the machine, Claimant responded: "No." Finally, Carrier asserted that the Organization had "arbitrarily and without the concurrence of the Carrier" consolidated the claims of Herbert and Guadalupe Hinojosa onto one case before the Board.

A careful review of this record has led us to conclude that the cases presented to this Board are essentially the same as were presented on the property. The only discernable difference is that the two claims, one progressed on behalf of H. Hinojosa and the second on behalf of G. Hinojosa, were combined into a single claim. Therefore, we cannot find that the combining of the separate claims into a single claim and Submission constitutes a fatal flaw.

With regard to the merits of this issue, Machine Operator H. Hinojosa and Machine Operator G. Hinojosa exercised their seniority in an attempt to bump onto positions as Ballast Regulator Operators on the BR36M and BR44M, respectively. Claimants were given the opportunity to qualify for a reasonable period of time, under the tutelage of experienced operators. Despite the training periods, each Claimant, respectively, failed to qualify for said positions. In fact, Claimant G. Hinojosa conceded he did not know how to operate Ballast Regulator BR44M.

There is nothing on this record which causes us to conclude that Carrier violated any Agreement Rules or abused managerial discretion when it disqualified the Claimants. It is within Carrier's rights to make such determinations, especially subsequent to affording Claimants the opportunity to train and demonstrate qualifications for a position. Based on the foregoing, this claim is denied.

AWARD

Claim denied.

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ORDER

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 30th day of December 1997.