

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36035
Docket No. MW-36292
02-3-00-3-465**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly removed and disqualified Mr. E. E. Ewoldt from a speed swing operator position on System Rail Gang 9031 on January 12, 1999 and continuing (System File 4WJ-7252G/1197232).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. E. Ewoldt shall now ‘ . . . have his Speed Swing Operator qualifications reinstated and must be compensated for the difference between the Speed Swing Operator pay received on the 9031 Gang and the position filled by Claimant subsequent to his January 12, 1999 disqualification.***”**

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.

The Claimant entered service and established seniority on September 7, 1977 on the former C&NW. He was promoted and established a seniority date of September 5, 1988 as an Interdivisional Track Machine Operator (TMO). Following the merger of the former C&NW with the Union Pacific Railroad, his name and seniority dates were dovetailed onto the Carrier's system gang seniority rosters as a Group 26, Class C TMO in accordance with the parties' August 1, 1998 Implementing Agreement.

On January 4, 1999, the Claimant exercised his seniority rights as a TMO and was assigned to operate a Pettibone 441-D Speed Swing on System Gang 9031 at Fairbury, Nebraska. On January 12, 1999, he received a notice from his Supervisor informing him that he had been disqualified from the position.

The Organization protested the disqualification and requested an Unjust Treatment Conference which was held on March 4, 1999. The parties were unable to resolve the matter and the Organization subsequently filed the instant claim.

The evidence and arguments presented during the on-property handling of this claim are virtually identical to that presented in the case of K. L. Vermillion, who was also disqualified as a Speed Swing Operator during this time frame. The propriety of that disqualification was addressed by the Board in Third Division Award 36036. For the same reasons expressed therein, we find that the record supports the disqualification and that the Carrier's determination was not arbitrary or capricious. Accordingly, the claim is denied.

AWARD

Claim denied.

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 21st day of May, 2002.