

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36580  
Docket No. MW-36781  
03-3-01-3-345**

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

**(Brotherhood of Maintenance of Way Employes  
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, disqualified and withheld Messrs. J. Greer and D. Doddema from their respective track machine operator positions on Gang 9044 on February 3, 2000 and continuing (System File UPSGRM-9128G/1232463).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Greer and D. Doddema shall now each ‘\*\*\* be made whole for the differential in pay from that position, including overtime and travel time hours, and the positions that he has held since that time, starting February 3, 2000, up to and including the time and date this claim is settled.’”**

**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.

Claimants J. Greer and D. Doddema entered the former C&NW's services on October 9, 1996. They were promoted and established seniority as Track Machine Operators. They subsequently established seniority as System Track Machine Operators on the Carrier's system gangs following the parties' Agreement consolidating Maintenance of Way system operations of the Union Pacific, Southern Pacific Western Lines, Denver and Rio Grande Western, Western Pacific, and Chicago and North Western under one Agreement.

Claimant Greer exercised his seniority right to displace a junior employee on System Gang 9044 on January 21, 2000. Claimant Doddema exercised his seniority right to displace a junior employee on System Gang 9044 on January 23, 2000.

On February 3, 2000, both Claimants were disqualified from their positions as Track Machine Operators on the Jackson 6700 Tamper assigned to System Gang 9044 after Carrier supervisors allegedly observed that the Claimants were unable to operate the machine satisfactorily.

An Unjust Treatment Conference was held on February 28, 2000 and the disqualifications were upheld. This claim followed.

The record shows that the principal reason offered by the Carrier for the Claimants' disqualification was that they surfaced a curve without super elevation after having been instructed to do so. The Claimants provided written statements to the contrary and claimed that they had specifically been instructed to line the curve as they did. They further asserted that a second tamper was to make the final lift which included the elevation.

The Organization contends that the disqualifications were improper and unsubstantiated. In its view, the record indicates that the Claimants were singled out and "set up to fail" by following instructions which were later disavowed. Moreover, the Organization argues that no justification for the disqualification was produced in writing, contrary to Rule 10(b), which provides:

**"RULE 10 - ROADWAY EQUIPMENT SUBDEPARTMENT**

- (b) An employe applying for position of operator of a type of roadway equipment to which he has not heretofore been assigned will not be assigned until considered qualified by the Manager M/W Equipment.

\* \* \*

**An applicant who fails to meet the necessary requirements shall be advised in writing of the reason or reasons."**

The Carrier argues that after it had determined that the Claimants were unable to perform the functions required on the Jackson 6700 Tamper, its subsequent action of disqualification was properly taken. The Carrier's position is that its determination to disqualify the Claimants was within its managerial prerogative and therefore the Board has no proper basis to substitute its judgment for that of the Carrier.

Careful review of the record shows that statements in support of the parties' respective positions were presented during the on-property handling of this dispute. These statements reflect what can only be deemed conflicting accounts of the events which led to the Claimants' disqualification. The Organization submits that the Carrier's evidence should be rejected by the Board as an unconvincing attempt to bolster an otherwise meritless disqualification.

The Organization's arguments, when closely examined, are an attack on the credibility of the supervisor who supplied the statement. It must be remembered, however, that matters of qualification, fitness and ability to perform a job are determinations to be made by the Carrier, subject only to limited review by the Board as to whether the Carrier's determination was made in an arbitrary or capricious manner. In this case, Management concluded after the Unjust Treatment Conference that the supervisor's account of the February 3, 2000 incident was more believable than the Claimants' version. Our narrow scope of appellate review in a disqualification case does not permit a re-examination of that credibility determination.

That being the case, we cannot find that the Carrier was arbitrary in its determination to disqualify the Claimants or that it acted in a capricious or

discriminatory manner. Given the seriousness with which supervision viewed the Claimants' unsatisfactory performance on the tamper, a rational basis existed for the disqualification, and assertions that the Claimants were singled out for unfair treatment must be rejected on that basis.

Finally, the Organization failed to show that the Agreement language was violated when the Carrier failed to advise the Claimants in writing of the reasons for their disqualification. Rule 10(b), relied upon by the Organization, is titled "Roadway Equipment Subdepartment." The Organization has not demonstrated that the Rule applied to the Claimants, who are Track Machine Operators.

Based on all the foregoing reasons, the claim must be 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 16th day of June 2003.