

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37651  
Docket No. MW-37651  
05-3-02-3-722**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**PARTIES TO DISPUTE:** ( **(Brotherhood of Maintenance of Way Employees**  
**(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 Mr. R. L. Williams from a track machine operator position on System Gang 8532 on July 25, 2001 and continuing (Carrier's File 1291035).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. L. Williams shall ‘. . . be compensated for net wages lost, straight time and overtime, as a result of the Carrier's actions. . . .’”**

**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 held seniority in various classes, including Machine Operator, in the Maintenance of Way Department on the Western Division. On the dates relevant to this matter, he was regularly assigned to the position of Speed Swing Operator on System Gang 8532, an on-line gang working a compressed workweek in accordance with the terms of the Agreement.

In early July 2001, the Claimant bid to a Speed Swing Operator position on System Gang 8532. He assumed the position on July 19, 2001, and worked under Supervisor M. Begay. The speed swing that the Claimant operated was one that he had not previously operated, although it is uncontested that the Claimant was experienced in operating other models of speed swings. On July 25, 2001, after working on the speed swing for six days, the Claimant was disqualified because, according to Supervisor Begay, he engaged in the following actions:

- \* Claimant failed to use his tagline when conditions warranted.
- \* Claimant did not wear his safety equipment.
- \* Claimant made a reverse move without checking behind him.
- \* Claimant did not sound horn prior to backing the speed swing up.
- \* Claimant did not pay attention to the employees working around his equipment.
- \* Claimant left the boom on the crane in the air rather than lowering it to the ground when leaving the speed swing.
- \* Claimant did not secure the machine by putting the highway wheel down to keep it from rolling on the highway wheels.

Pursuant to these actions, the Claimant was provided with a written disqualification letter and was allowed to exercise his seniority in accordance with the Agreement.

The Organization requested a conference for the Claimant. However, because the Claimant's social security number was incorrectly referenced in the conference request letter, no conference was scheduled.

The Organization takes the position that the Carrier violated the Agreement when it disqualified the Claimant from the position of Speed Swing Operator. According to the Organization, the Claimant did not have the proper amount of time to qualify on the speed swing. Further, the Claimant was denied an Unjust Treatment Hearing because the General Chairman erred by incorrectly recording the Claimant's social security number on the conference request. The Organization claims that all other information was correct and therefore, the Carrier could have, or should have, known who the Claimant was and granted him the Unjust Treatment Hearing. The Organization asks that the Claimant be compensated for net wages lost, straight time and overtime, as a result of the Carrier's improper actions.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the record clearly shows that the Claimant was properly disqualified from the position of Speed Swing Operator. The Claimant engaged in numerous errors and it was reasonable for the Carrier to disqualify him. Further, the Carrier contends that it did not improperly deny an Unjust Treatment Hearing. According to the Carrier, when it determined that the Claimant was the individual identified in the request, it contacted the General Chairman and indicated that it was ready to proceed with an Unjust Treatment Hearing.

After a review of the evidence, the Board finds that the Organization has not been able to sustain its burden of proof in this matter. There is insufficient evidence in the record to demonstrate that the Claimant was improperly disqualified. The Organization cannot prove that the Claimant did not engage in numerous errors while attempting to qualify on the Speed Swing between July 19 and July 25, 2001. Further, as to the denial of the Unjust Treatment Hearing, the Organization cannot prove that the Carrier improperly denied the Claimant an Unjust Treatment Hearing. The evidence shows that the Carrier attempted to reach the General Chairman. Thus, the Board finds that the Organization has been unable to meet its burden of proof to show that the Carrier violated the Agreement.

Based on the record, we find that the Carrier acted appropriately when it disqualified the Claimant from his position as Speed Swing Operator. In addition, it

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**did not improperly deny the Claimant an Unjust Treatment Hearing. The claim will 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 7th day of December 2005.**