

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40203
Docket No. MW-38473
09-3-NRAB-00003-040450
(04-3-450)**

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 (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed and disqualified Machine Operator C. Loch from his assigned ballast regulator position on Gang 9106 on June 23, 2003 (System File T03-49/1372498 MPR).**
- (2) As a result of the violation referred to in Part (1) above, the disqualification shall now be removed from Mr. C. Loch’s record and he shall be reinstated to the ballast regulator position effective June 23, 2003.”**

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.

On June 13, 2003, the Claimant was assigned to a Ballast Regulator Operator position. His supervisor, upon observing the Claimant operate the machine for several days, concluded that the Claimant was unable to operate the machine safely, efficiently, and properly. Pursuant to that observation, on June 23, 2003, the Carrier notified the Claimant that he was disqualified from the Ballast Regulator Operator position. The Claimant consequently placed himself on another position in accordance with the Agreement.

The Organization contends that the Claimant is qualified for the position of Ballast Regulator Operator. It claims that the Claimant was improperly disqualified from the position. As a remedy, the Organization asks that the Carrier remove the disqualification from the Claimant's work record and that he be deemed qualified as a Ballast Regulator Operator as of June 23, 2003.

Conversely, the Carrier contends that the burden is on the Organization to prove that the Claimant was qualified for the Ballast Regulator Operator position. It contends that it reasonably observed that the Claimant was not qualified and acted properly in disqualifying the Claimant. In addition, it contends that because the Claimant retired from the Carrier's employment on August 23, 2008, the matter is moot and the Board need not reach the question of disqualification.

After a review of the record evidence and the positions of the parties, the Board agrees with the Carrier that based on the Claimant's retirement date, the matter is moot. Other Section 3 tribunals have similarly held that when an employee retires prior to the determination in such a matter, the Board need not reach the substantive merits of the case. See Third Division Award 37949, as well as Public Law Board No. 6719, Award 34. In view of the foregoing, the instant claim is dismissed.

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AWARD

Claim dismissed.

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 December 2009.