

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40931
Docket No. MW-41081
11-3-NRAB-00003-090457**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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 recalled Mr. J. Dugan to an REO - Multi Crane operator position on Consolidated System Gang 9001 and when it thereafter erroneously removed all of his REO seniority (System File R-0823U-301/1503739).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant J. Dugan shall now ‘***have his Consolidated System Gangs REO seniority date of 08-24-06 restored.’”**

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 facts indicate that on March 6, 2008, the Claimant was issued a recall letter to report to a Roadway Equipment Operator (REO) position on System Gang 9001 as a Multi-Crane Operator pursuant to Rule 23(e) of the July 1, 2001 Agreement. It is undisputed that the recall letter arrived at the Claimant's home on March 8, 2008, while he was away working on a different assignment. The Claimant's spouse informed him of the letter and on March 10, the Claimant called NPS Clerk R. Bena and advised him that he would not be protecting his recall assignment because he was not qualified to operate a Multi-Crane. Clerk Bena advised the Claimant that his personal record showed he was qualified and he should report to Gang 9001 to protect his REO seniority. The Claimant did not report for the assignment and because of that, his seniority was removed.

It is the position of the Organization that the Carrier erred in removing the Claimant's seniority because he was justified in not reporting for the assignment because he was not qualified to operate a Multi-Crane and if he had attempted to do so, he could have been a potential danger to his fellow workers and company equipment. It argued that because the Claimant was not qualified on a Multi-Crane he was not eligible to be recalled under the provisions of Rule 20(e) (3). It further argued the Carrier relied on inaccurate data in its Machine Operator Qualification Database. It pointed out that the Claimant called Supervisor Gunderson of Gang 9001 and explained to him that he had never set foot on a Multi-Crane, let alone thread a rail. According to the Organization, Gunderson thought he could straighten out the error with a simple phone call. The Claimant also called the Vice General Chairman of the Organization who in turn called B. Odem who was in charge of the Machine Operator Qualification Database and informed him that the Carrier's database was in error as the Claimant was not qualified as a Multi-Crane Operator. It asserted that Odem should have called the GMS Clerk and had the recall canceled. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that the Claimant was qualified for the position and properly notified of the recall. It argued that given the closeness as to the operations of the Multi-Crane and the Little Giant Crane, which the Claimant had worked on, the Carrier had considered them equally for qualification purposes and it was not within the Organization's right to determine qualifications on a machine. It further argued in its letter of September 30, 2008, the Claimant “. . . is qualified on the ‘Little Giant’ crane, which is very similar to the Multi-Crane in concept, theory, requirements and operation.” It went on in that same letter to state: “If the Carrier were to agree with the Organization I wonder if the Organization would be

so agreeable if the Carrier denied an REO a displacement right onto a position requiring the operation of a 'multi-crane' if the data showed that he or she was qualified on a 'little giant' crane." It closed by asking that the claim remain denied.

The Carrier's rhetorical question above is interesting, but is left for another day. Despite the Carrier's assertion that the aforementioned machines were similar the Organization offered evidence to the contrary, and of particular interest was the fact that Supervisor Gunderson of Gang 9011 was not comfortable with the Claimant being assigned to operate the Multi-Crane. It is also noteworthy that the Organization challenged the Carrier in its appeal letter of August 3, 2008, to offer documentation showing where the Claimant had spent 30 working days operating a Multi-Crane in order to qualify, and if it could produce such evidence it would withdraw its claim. The Carrier did not address that challenge. The Claimant perhaps said it best in his written statement "Safety first, production second." The Board finds and holds that based upon the unique facts and circumstances of the dispute the Carrier erred when it removed the Claimant's Consolidated System Gangs REO seniority date of August 24, 2006. Consequently, it is restored and the claim is sustained as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of March 2011.