

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25331
Docket Number MW-25292

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company
((former St. Louis-San Francisco Railway Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The disqualification of Mr. R.E. Prugger as spike reclaimer operator on January 20, 1982 was improper, without just or reasonable cause and an abuse of justice and discretion by the Carrier (System File B-2075/MWC 82-18-18).

(2) The Carrier shall return the claimant to the position of spike reclaimer operator and shall reimburse him for all wage loss suffered from the date of disqualification until the date he is restored to the position of spike reclaimer operator.

OPINION OF BOARD: The significant events leading to this dispute began after the Claimant had placed his bid for a Spike Reclaimer Operator vacancy and was awarded the assignment. Shortly before beginning his new assignment, the Claimant sustained an on-duty injury of his right hand, resulting in a loss of thirty-three (33) work days. Following a medical determination allowing him to return to work with no restrictions, the Claimant commenced work as a Spike Reclaimer Operator. After three days, the Carrier's Officials concluded that his production was not sufficient because he failed to keep ahead of the tie shears, and, consequently, slowed down the progress of the entire work gang. Because of his low production, he was disqualified as an Operator. The Claimant then chose to take a furlough rather than exercise his seniority for a Trackman position. However, he ultimately returned to work as a Trackman. In the interim, this claim, which centers on the disqualification issue, was progressed to the Board for resolution.

At the outset, the medical determination for return to duty with no restrictions is substantiated by the Claimant's own testimony. Accordingly, the Carrier's finding that the Claimant's injury was not the reason for his failure to satisfactorily perform his job was reasonable. Following the disqualification, the Claimant, on his initiative, chose to take himself out of service on furlough.

With respect to the seniority contentions, the Board finds that the Claimant has not established Class 4 seniority under the controlling Agreement. Moreover, the Carrier's right to rule on qualifications is well established. Given the facts here, there is no legitimate basis to disturb the Carrier's decision.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

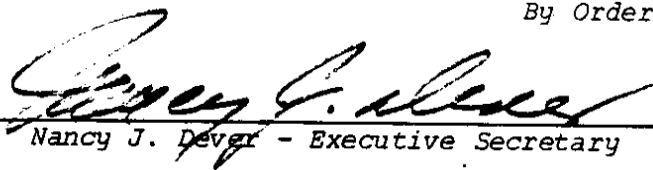
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.