

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28476
Docket No. MW-28456
90-3-88-3-256

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company
(Missouri Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when, on December 5, 1986, it failed and refused to allow Machine Operator S. R. Judd to displace a junior machine operator on the Ballast Dress Cultivator machine assigned to Gang 5020 at Holden, Missouri (Carrier's File 870439).

(2) As a consequence of the aforesaid violation, Mr. S. R. Judd shall be allowed:

'... eight (8) hours per day, including any overtime, and Holiday pay as a result of not being allowed to displace in line with his Seniority as a Machine Operator (sic) as exhibited (sic) on the Central District Roster. This claim shall begin as of December 5, 1986, and continue to the last day a District Operator junior to the Claimant (sic) was allowed to work, January 16, 1986. ***'"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant is a Machine Operator who was displaced from his position based on force reduction. He attempted to exercise his seniority on another Machine Operator's position, that of operating a Ballast Dress Cultivator. This displacement was denied by the Carrier on the basis that the Claimant was not "qualified."

In its action, the Carrier finds support in Rule 2(g), which reads in pertinent part as follows:

"(g) Foremen, mechanics, helpers, and employees of like rank in other departments who are subject to the provisions of this agreement, after having exhausted their rights in the class in which employed, shall have the right to drop back to the next lower classification in line with their seniority in that classification. To be entitled to drop back to the next lower classification and retain seniority in the higher classification the employee must have exhausted displacement rights over junior employees in the higher classification if qualified for the position held by the junior employee (an employee may not disqualify himself), otherwise if he exercises seniority in a lower classification he will forfeit seniority in the higher classification."

This Rule, however, primarily concerns an employee seeking to displace to "drop back to the next lower classification." In this instance, the Claimant seeks to remain in the same classification. The second sentence of Rule 2(g) repeats the requirement that an employee be "qualified."

The issue here, therefore, is whether the Claimant is qualified on the Ballast Dress Cultivator. The Organization alleges that the Claimant had "successfully operated the Carrier's BDC-61 and similar surfacing gang equipment a total of eighty-eight hours." No specific dates or circumstances were submitted. In its response on the property, the Carrier stated as follows:

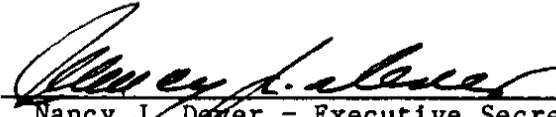
"You [the Organization] contend that Claimant Judd was purportedly qualified on this equipment, however you have yet to come forth with even a shred of evidence to substantiate your allegations. In review of timekeeping documents we have been unable to determine that ... [the Claimant] had ever previously operated this, or any similar type equipment."

In the face of this direct conflict of alleged facts, the Board is not able to resolve the issue. The general right to require qualification prior to displacement is well established, and the Carrier's position must be supported.

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 7th day of August 1990.