

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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 Carrier violated the Agreement when it improperly disqualified Mr. J. H. Powell as Machine Operator of Speed Swing No. 34 for alleged failure to keep up the maintenance of said machine, for allegedly being hazardous to other employees and for allegedly being quarrelsome on June 22, 1987 (Carrier's Files 870681 and 870682).

(2) The Claimant shall have the disqualification letter removed from his employment record and he shall be paid the difference in rate of pay between machine operator and trackman for eight (8) hours each day, including any overtime falling therein and for all holidays, beginning June 22, 1987 and continuing until he is permitted to fill a machine operator's position."

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 employees 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 was assigned as a Machine Operator on Speed Swing SS-34 effective June 1, 1987. For the next three weeks, according to the Carrier, the Claimant failed to perform routine maintenance on the machine, operated it in a hazardous or unsafe manner and was quarrelsome or argumentative. Accordingly, on June 22, 1987, the Claimant was notified that he was disqualified from the machine.

The Organization, in presenting this Claim, asserts the Claimant was improperly disciplined without benefit of Investigation as provided in Rule 12 (Discipline and Investigations). It also argues the Claimant had already qualified as a Machine Operator as he had operated various machines before. We fail to find support in either of the Organization's arguments.

The record does not indicate the Claimant has been disqualified from all Machine Operator positions. It is evident that its actions were directed only at the Claimant's assignment to this particular machine. While the Claimant's past experience as a Machine Operator may have been sufficient to enable him to exercise his seniority to Speed Swing SS-34, he could still be required to demonstrate his proficiency on that machine. The Organization has relied upon Rule 10 (Promotion), which provides that:

"(a) Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail, the management to be the judge subject to appeal."

Rule 10(d), however, further provides as follows:

"Employees accepting promotion and failing to qualify within thirty (30) days, may return to their former positions without loss of seniority."

While the reasons advanced by the Carrier for its disqualification of the Claimant might, if proven, afford a basis for disciplinary action, the Carrier elected to exercise its right under Rule 10(d) to remove the Claimant from the machine. The Rule does not require the Carrier to conduct a Hearing prior to taking this action.


There is no evidence in this case that the Carrier's decision was arbitrary or unreasonable. Although the Claimant offered explanations for the problems he encountered on the job, the underlying facts were not disputed. Accordingly, there is no basis to disturb the Carrier's decision.

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 28th day of February 1991.