

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30060
Docket No. MW-30462
94-3-92-3-300

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

1. The Agreement was violated when the Carrier improperly disqualified Mr. G. Duke as a torsion beam operator under date of October 16, 1990 (System Docket MW-1724).
2. As a consequence of the aforesaid violation, the disqualification shall be immediately rescinded, all reference to the disqualification shall immediately be removed from M. Duke's record, he shall be afforded his proper seniority date as a Class 1 Machine Operator, Torsion Beam and he shall be compensated for all wage loss suffered."

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 employe 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.

On September 24, 1990, Claimant was awarded the position of Class I Machine Operator - Torsion Beam. On October 16, 1990, the Carrier administered a test to determine if Claimant was qualified to operate the machine. According to Carrier, Claimant was unable to perform the basic task of setting up the machine. Carrier states Claimant could not unlock the production clamps by turning the proper valve from "travel" mode to "work" mode. Additionally, the Carrier asserts Claimant then failed to press a button to

energize the clamp valve to create hydraulic pressure. As the test continued, Carrier says Claimant was unfamiliar with and unable to operate the autograph liner that properly aligns track when using the Torsion Beam Tamper.

As a result of this test, the Carrier determined that Claimant was not qualified to operate the machine. Consequently, Claimant was given notice on October 16, 1990, that he was disqualified from the position. In support of its action, Carrier relies upon Rule 3, Section 2 of the Agreement, which reads as follows:

"Section 2. Qualifications for positions.

In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

The Organization does not dispute Carrier's right to assess Claimant's qualifications, but asserts Carrier failed to do so in a reasonable manner. Specifically, the Organization asserts Claimant had been primarily assigned as a foreman/pilot while he was training on the machine. As a result, he had only one hour and twenty minutes of actual operating time during the two weeks prior to his disqualification. The Organization also states Claimant was required to perform a task with which he had not yet been familiarized, namely setting up the liner mechanism. The Organization notes the machine required calibration and other repairs to the rear lining mechanism before this aspect of the test could be conducted. Finally, the Organization claims he was treated unfairly because his supervisor, one day before the test, had informed Claimant that he was going to be displaced by a junior employee.

We do not agree, as suggested by the Organization, the Claimant's disqualification was a disciplinary action which would necessitate a formal investigation as a condition precedent. Unlike the situation presented in Third Division Award 28721, cited by the Organization, Claimant had been assigned to this position only three weeks. During this time, Carrier was privileged to assess Claimant's qualifications and remove him from the position if they were found to be insufficient. Claimant's seniority on the position does not attach until he has completed a thirty day qualification period. This is made clear by Rule 3, Section 5, which states:

"Section 5. Failure to qualify - Advertised position.

An employee failing to qualify for a position within thirty (30) days will not acquire seniority dating on the position for which he failed to qualify and will within five (5) working days, return to his former position unless it has been abolished or filled by a senior employee, in which event he may exercise seniority."

It is well established that, absent any rule to the contrary, Carrier has the prerogative of determining whether or not an employee is qualified for a specific position. This Board generally does not sit in judgment of an employee's qualifications. As with any prerogative of management, however, there is the duty that it be exercised in a reasonable manner. In this case, Rule 3, Section 2 requires that the practical demonstration the employee is required to give be reasonable. In this regard, reasonableness has two standards. First, the test must be representative of the work that the employee might be expected to perform, and must be under the type of conditions that might be present when he performs such work. Second, the test must be reasonably related to what the employee has had an opportunity to learn. (This second test, of course, is applicable only in cases where the Carrier has some obligation to do so. In this case, it was not in issue.)

We have not been referred to any rule which sets forth a minimum training period which must be afforded before the Carrier may assess an employee's qualifications. The construction of Rule 3, Section 5 allows the Carrier to disqualify an employee any time during the thirty day period. The Carrier made its assessment three-quarters of the way through this thirty day period. That fact, in and of itself, is insufficient to conclude Carrier acted unreasonably.

As to the Organization's contention that Claimant was not afforded sufficient time to learn the machine, we find that the evidence of record does not support this argument. Although the Organization has referred to Claimant performing only limited work on the machine during the last two weeks he was on the job, it is evident that Claimant started to train with the previous incumbent when that employee first bid on another job in late August 1990. This was before the position of Torsion Beam Operator was vacated. Once it was bulletined, Claimant worked the job on and off until it was awarded to him.

Based upon all the evidence of record, we must conclude Claimant was afforded an adequate opportunity to learn the workings of the Torsion Beam and become qualified on it. There is no basis

to conclude Claimant was qualified. Nor is there any basis to conclude the Carrier acted unfairly in making its determination. The Agreement, therefore, was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.