

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33050

Docket No. MW-33770

99-3-97-3-239

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railroad

(former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s decision to disqualify Mr. F. Williams as a Group 3 Machine Operator on June 10, 1994 was without just and sufficient cause, unfair and in violation of Rule 23 (System File T-D-834-B/MWB 94-12-22AA BNR).**
- (2) As a consequence of the aforesaid violation, Mr. F. Williams’ record shall now have the June 10, 1994 disqualification letter removed and he shall be allowed to demonstrate his ability to qualify as a Group 3 Machine Operator.”**

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.

On April 27, 1994 the Carrier bulletined a Group 3 Machine Operator position on a Jackson tamper near Minneapolis, Minnesota, which was awarded to the Claimant. However, because the Claimant held no Group 3 seniority, he was placed into the position subject to qualification. Fourteen days later the Carrier disqualified the Claimant from the position and he subsequently displaced to another position. The Claimant contested the disqualification under Rule 23 which reads, in relevant part:

“Employees awarded . . . positions, . . . in a class in which not yet qualified, will not be disqualified for lack of ability . . . after . . . thirty (30) calendar days thereon. Employees will be given a reasonable opportunity . . . in order to qualify for such work. . . .”

The Organization first contends that the Carrier violated Rule 23 when it did not permit the Claimant 30 days within which to qualify for the position in question. Alternatively, it argues that whatever opportunity that was afforded to the Claimant was not reasonable under the circumstances. The Carrier on the other hand argues that it is not obligated to provide, under Rule 23, anything other than a reasonable opportunity and that under the circumstances of the instant case that obligation was fulfilled.

We agree with the Carrier on both counts. First, by the literal language of Rule 23 when an employee who is not yet qualified for a position is placed into that position the only contractual obligation with regard to qualifying is that the Carrier provide a “reasonable opportunity.” Indeed, the Awards cited by the Organization support this view for in each of those cases the claimants were disqualified before the time period set forth in the Rule and each of the Awards considered only whether the opportunity to qualify was reasonable. Thus, the only time period specifically agreed upon is that which will apply in those cases when an employee has been in the position in question for more than 30 days without first qualifying. Clearly, the record shows that such is not the case in this matter.

The only remaining question therefore is whether the Carrier met its contractual obligation to provide the Claimant with a “reasonable” opportunity to qualify. The unrebutted evidence is that several Carrier representatives spoke to the Claimant about

his poor performance in the position in question and that he replied that the machine was "over his head" and that he would never bid on the position again. Furthermore, the Claimant himself helped to provide the answer to this dispute when he testified that "... we pretty much all agreed that it, you know, there was no way that I was going to learn that machine even if I was given the full 30-days with my lack of experience."

In light of the foregoing we find that the Carrier did not violate Rule 23 when it disqualified the Claimant on June 10, 1994 from the position of Group 3 Machine Operator on the Jackson tamper 6500.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of February 1999.