Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35005
Docket No. MW-31562
00-3-93-3-572

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to reimburse Palestine Division Machine Operator J. G. Pitts for expenses and travel time incurred as a result of his being denied the opportunity to displace Mr. C. G. Carranza on Gang 2836 at Austin, Texas on June 22, 1992 (Carrier's File 920553 MPR).

(2) As a consequence of the violation referred to in Part (1) above, Claimant J. G. Pitts shall be allowed the reimbursement for the expenses and travel time listed in the initial letter of claim."

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.

This case involves a claim by the Organization that the Carrier violated the Agreement by arbitrarily disallowing the Claimant a reasonable opportunity to qualify on the ATS-87, a Canron Mark III Tamping Machine assigned to Gang 2836 in the vicinity of Austin, Texas, and by thereafter requiring the Claimant to accept a distant assignment in Bryan, Texas, at his own expense, to validate his qualification on the ATS machine. The Organization seeks, on the Claimant's behalf, travel time and reimbursement for mileage and lodging in connection with his commute between his home in Austin and the job in Bryan.

The Claimant holds seniority as a Machine Operator on the Palestine Division. On June 22, 1992, prior to the instant dispute, he was displaced by a senior Machine Operator from his assignment operating a Ballast Regulator BR-164 on Surfacing Gang 2888 in the vicinity of San Antonio, Texas. The Claimant thereafter sought to displace junior Machine Operator C. G. Carranza, who was operating an ATS-87 on Gang 2836 at Roundrock, Texas. The Manager of Track Maintenance ("MTM"), O. Escamilla disallowed the displacement on the grounds the Claimant was not qualified on that tamping machine.

On June 28, 1992, however, Mr. Escamilla changed his mind, and advised the Claimant that he would be allowed one day to "break in" on Mr. Carranza's position. Accordingly, on June 29, 1992, the Claimant was allowed to displace Mr. Carranza. That same day, the MTM extended the Claimant's time to qualify on the tamper to one week.

Nevertheless, after three days on the ATS-87, the Carrier advised the Claimant that he would not be qualified on the ATS-87 and that he should exercise his seniority elsewhere. Accordingly, the Claimant thereafter displaced junior Machine Operator D. L. Jaecks from his position as Operator of Ballast Regulator BR-14 on Surfacing Gang 2230 in Bryan, Texas. However, on July 8, 1992, the Claimant was advised by MTM A. Eaton that he would be allowed 30 days to qualify on the ATS-81 machine on Gang 2230. The ATS-81 and ATS-87 are identical machines.

According to the Organization, these facts demonstrate that the decision disallowing the Claimant an opportunity to qualify on the ATS-87 was unreasonable. Further, the Organization argues, the Carrier's actions arbitrarily and unnecessarily

required the Claimant to accept a distant assignment to validate his qualifications on the ATS machine. The Organization asserts that the Carrier is responsible for the travel, meal and lodging expenses incurred by the Claimant in connection with his improper displacement from Gang 2836 before he had a fair opportunity to qualify on the ATS-87.

The Carrier, on the other hand, argues that its decision disqualifying the Claimant from the ATS-87 was authorized by Rule 2(g). Rule 2(g) states, in pertinent part:

> "(g) Foremen, mechanics, helpers, and employes 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 employe must have exhausted displacement rights over junior employes in the higher classification if qualified for the position held by the junior employe (an employe may not disqualify himself), otherwise if he exercises seniority in a lower classification he will forfeit seniority in the higher classification. . . ."

According to the Carrier, the Claimant's attempt to displace a junior Machine Operator on the ATS-87 was properly denied because the Claimant was not qualified on that machine. Citing Awards of the Third Division interpreting Rule 2(g), the Carrier maintains that the Claimant could not displace Mr. Carranza because he was not qualified on the ATS-87 prior to displacement and that he was not entitled to a trial period.

Further, the Carrier states that the Claimant is not entitled to travel time or to mileage and lodging reimbursement. The Carrier asserts that its determination that the Claimant was not qualified on the ATS-87 was proper, and the Claimant's travel to Bryan was merely a consequence of his exercise of seniority. Under Rule 8, the Carrier points out, "[e]mployes accepting a position in the exercise of their seniority rights, will do so without causing extra expense to the railroad." Moreover, according to the Carrier, the Claimant was provided all meals and lodging expenses due under the Award of Arbitration Board 298. With respect to travel time, the Carrier argues

that for employees who, like the Claimant, are not assigned to fixed headquarters or in outfit cars, Rule 21 of the Agreement does not provide for travel time or mileage in connection with travel between home and work.

After reviewing the record evidence, we have determined that the claim should be denied in part and sustained in part. Rule 2(g) and the Awards of the Third Division are clear in establishing that the Claimant was not entitled to a trial period on the ATS-87. However, having consented to giving the Claimant an opportunity to train on the ATS-87, and prove himself qualified to operate the machine - despite the Carrier records indicating the Claimant had never run a Mark III Tamper - we think the Carrier was required to give the Claimant a fair and reasonable period within which to establish his ability to operate the machine. The three days which the Claimant was given to qualify on the ATS-87 were not sufficient.

We observe that the record demonstrates that the Claimant ultimately was given an opportunity to qualify on an identical machine, the ATS-81, and with training established his qualifications to operate a Mark III Tamper. The record contains no evidence with respect to how long it took the Claimant to become qualified on the machine or whether such time as he took was reasonable. Accordingly, we make no finding, on this record, as to how long a time the Carrier should have given the Claimant to qualify on the ATS-87.

We further find no basis for awarding the monetary remedy the Organization seeks. While we acknowledge that the Claimant incurred travel expenses that he would not have incurred had he remained in the Austin vicinity and qualified on the ATS-87, we find no basis in the Agreement for awarding travel time and mileage. Rather, we find that the Claimant had a duty to mitigate any losses he might have incurred as a result of the Carrier's violation. In the absence of evidence that he attempted but was unsuccessful in securing reasonable lodging in the Bryan area during the period covered by this claim, we will not award travel time or mileage reimbursement. With respect to meals and lodging, the evidence establishes that the Claimant was provided such benefits as he was due under Award 298.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of September, 2000.