

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35917
Docket No. MW-35633
02-3-99-3-558

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway Company
((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. T.W. Brown as a Group 3 Machine Operator (Jackson Tamper 6700) on April 9, 1998 was without just and sufficient cause, unfair and in violation of Rule 23 (System File C-98-D090-5/MWA 98-09-02AC BNR).
- (2) As a consequence of the aforesaid violation, Mr. T.W. Brown’s record shall now be ‘ . . . be reinstated to the 6700 which he was disqualified from. He should also be made whole for all lost wages including overtime that he has lost since his disqualification. I would also like to remind you that this is a continuing claim until such time Mr. Brown is reinstated to the 6700 tamper with all rights and loses (sic) returned to him.”

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.

In early March 1998, Claimant T. W. Brown was assigned, by bulletin, to a Machine Operator's position on the 6700 Production Jackson Tamper (hereinafter referred to as the "Jackson Tamper"). The Claimant, who had no prior experience on the Jackson Tamper, trained on the equipment from March 16 until April 9, 1998. On April 9, 1998 the Claimant was informed that he had been disqualified from the position.

On April 16, 1998, the Local Chairman requested an Unjust Treatment Hearing alleging that the Claimant had been disqualified "without provocation or justification." Said Hearing was scheduled, postponed, rescheduled and held to conclusion on May 29, 1998, after which the Carrier upheld the disqualification.

On June 5, 1998, the Local Chairman submitted a claim to Manager Maintenance Support Parenteau, alleging that the Carrier had violated the Agreement when the Claimant was "unjustly" disqualified on April 9, 1998. On July 31, 1998, Parenteau denied the claim stating that: "Our investigation reveals that the Claimant requested an Unjust Treatment Hearing and the disqualification was upheld. Given the above, your claim is respectfully denied in its entirety."

In the meantime, however, on July 19, 1998, Vice General Chairman Archibald sent Division Superintendent Houghton similar correspondence in which he also appealed Terminal Engineer Schibblehut's decision to uphold the Claimant's disqualification.

On July 30, Division Superintendent Satunas denied the Vice General Chairman's appeal, contending that the Claimant's April 9, 1998 disqualification was "justified and warranted." Shortly thereafter, on August 19, the Vice General Chairman sent Assistant Director Labor Relations Merrell an appeal regarding the Division Superintendent's July 30, 1998 denial. In pertinent part, Merrell informed the General Chairman that:

“Your August 1998 letter, no file number, appeals a claim on behalf of T. Brown and alleges the Carrier’s disqualification of the Claimant violated the Agreement.

First, the claim is not properly before the Carrier because the Organization has failed to follow the line of appeal as outlined. The line of appeal forwarded to the General Chairman indicates that only discipline should be appealed to the Division Superintendent and that all other claims and grievances should be handled with the Manager Maintenance Support. This case is not a discipline issue and the Organization’s appealing the dispute to the Division Superintendent did not comport with the line of appeal. Because of this glaring procedural error, the claim should be withdrawn.

Even if the claim were properly before the Carrier, and it is not, it is without merit. In a case of this nature, it is the Organization’s burden to prove that the employee should not have been disqualified. This can only be done by bringing forth evidence that Claimant was qualified to perform all aspects of the position to which assigned. Although the Organization proffered a couple of statements on the Claimant’s behalf, neither one indicates the Claimant’s production rate was satisfactory or that Claimant was a qualified operator. Inasmuch as the Organization has failed to prove any violation of the labor agreement, we deny this claim in its entirety.”

Our review of the record persuades us that the Organization failed to carry its burden of proving a violation of the Claimant’s contractual rights. Moreover, the Carrier correctly points out that the filing of duplicate claims by the Local Chairman and the Vice General Chairman was an unnecessary complication on the record.

AWARD

Claim denied.

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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 22nd day of January, 2002.