

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43547  
Docket No. MW-43097  
19-3-NRAB-00003-150325**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**  
**PARTIES TO DISPUTE: (**  
**(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 wrongfully disqualified Mr. M. Atkinson from the position of Gang 9112 Grapple Truck Operator by letter dated March 26, 2014 (System File UP711SN14/1604055 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Atkinson ‘... shall now have this disqualification from a Grapple Truck Operator removed from his record.’”**

**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.**

**The Claimant had established and held seniority within the Carrier's Maintenance of Way Department. At the time of the dispute, the Claimant was assigned as a grapple truck operator on Gang 9112. By letter dated March 26, 2014, Supervisor J. Francis notified the Claimant of his disqualification:**

**"This letter is to inform you that as of Wednesday, March 26, 2014, you are hereby disqualified as a Grapple Track Operator**

**Failure to properly, efficiently operate the track, resulting in significant delay, and Production loss to a QSP 202 Rail Gang...."**

**The Organization filed a claim on April 21, 2014, stating that the Claimant was unnecessarily disqualified from the position. On May 13, 2014, the Carrier denied the claim, stating that the Carrier retained the right to determine qualifications of employees. The parties were unable to resolve the claim on-property and it is now properly before this Board for final adjudication.**

**The Organization contends that the Carrier's disqualification of the Claimant was arbitrary and capricious because the reasons given for the disqualification changed. The Organization contends that Supervisor Francis' contention is inaccurate and contains insufficient evidence to show that the Claimant failed to operate his assigned grapple truck in a proper, efficient manner. The Organization contends that it provided a statement from the Claimant that he performed all his duties properly and as instructed. The Organization further contends that once the Claimant's statement refuted Supervisor Francis' statement, he changed his reason for disqualifying the Claimant, but provided no evidence to support his second allegation.**

**The Carrier contends that it has the managerial prerogative to determine fitness and ability of its forces, and that such decisions are subject to review only as to whether the determination was arbitrary. Further, the Carrier contends that once it has established that the employee does not possess the requisite fitness and ability to**

perform the job, the burden shifts to the Organization to show that the Carrier's determination was arbitrary.

The Carrier contends that Supervisor Francis did not change his reasons for disqualification by his statement dated April 29, 2014, but merely provided more detail regarding his initial decision to disqualify the Claimant. The Carrier contends that the Organization has failed to produce any evidence showing that it incorrectly determined that the Claimant did not possess the necessary fitness and ability to successfully perform the tasks required of him in the position.

The Claimant provided a statement that the Organization describes as refuting the Carrier's reason for disqualifying him:

"I have been disqualifide (sic) from my truck after I had talk to Ken Johnson and the Union about them doing my wrong. They put a welder Mr. Johnny McCoy on my truck because they said he was faster? I complane (sic) about it. And on March 8, 2014 Francis and Doug Sharp wanted to have a metting (sic) with me I ask for Union Rep. With this and they told me no. Then they told me they will disqualify me if I get on my truck and not meet there (sic) standards on March 26, 2014 they gave me a letter of disqualification as a grapple truck driver. Said that I 1.) Didn't fill the gopper I did on March the 24th I filled the gopper QSP 202 all the way up as instructed (witness name Mr. Quincy Bratchett Doug Sharp had up stop my responsibility and unload to simi (sic) truck for the MTM one was full of ties and the other was full of rail this intarfered (sic) with my work! But it was done the next day Mr. Francis ask me what took so long? But it was not a problem when Mr. Johnny McCoy's worked 24 hour's strate (sic) in a day. Nothing was said on me truck. 2.) Said I held the gang up. I didn't he had one that grapple truck in front of my with goope (sic). I fill the anchors up and finished before the gopper was done. The gopper operator ask me and I told him ok. But it is his responsibility to know when he is low. This is reprobation (sic) because I reported wrong doing. I shouldn't be disqualified."

Thereafter, Supervisor Francis provided this statement:

**“All of the grapple truck operators have standing orders to have all of their production related duties done before the Teams take the track, we do not micro manage processes in which their duties are fulfilled, as long as they are completed. On 3/26/2014 the RTP 0723 ran out of plugging compound less than a string into the days work (the operator requested two times for it to be filled, all of the fire fighting water was depleted and one anchor machine was empty.) Track Supervisor Doug Sharp instructed [the Claimant] the previous day to go to Jonesboro and take care of some errands after his daily duties were completed. When the gang foreman tried to contact Mr. Atkinson to get all of his needs fulfilled he could not reach him, [the Claimant] was already in Jonesboro and neglected to take care of his daily job responsibilities. On 3/11/2014 I approached [the Claimant] and questioned him about a bent ladder that I noticed on the passenger side of the truck, he could not give me an explanation as to what happened to it, after completing a walk around I noticed that the glad hands for air connections to the trailer were broke off and a rear step was missing, he could not provide an explanation for any of the damage on the truck. He was disqualified on 4/26/2014 For damaging truck without notifying supervision and not complying with instructions.”**

**Numerous Boards have found that the Carrier has the managerial prerogative to judge fitness and ability. Third Division Award 36957. When the Organization challenges the Carrier’s judgment, the burden falls on the Organization to establish proof of the employee’s fitness and ability. Third Division Award 21615. The Claimant’s disqualification from the grapple truck operator position was not discipline as argued by the Organization.**

**This Board cannot find that the Carrier’s decision to disqualify Claimant was arbitrary. The record shows that the Claimant failed to follow instructions from his supervisor and failed to explain damage to his truck. In addition, there is probative evidence that the Claimant’s failures impeded others from performing their duties. The Organization has failed to show that the Carrier’s determination was arbitrary.**

**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 27th day of March 2019.**