

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44075
Docket No. MW-43549
20-3-NRAB-00003-190601**

The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (Former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly and unjustly disqualified and removed Machine Operator D. Johnson from his position on Gang #9167 effective on January 26, 2015 (System File UP510JF15/1622196 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Johnson shall have said disqualification removed from his record and he shall be compensated for ‘... ten (10) hours each day for the difference in pay between Anchor Squeezer Operator and Track Man and any and all overtime acquired by the employee operating the AASQ1101, beginning on January 26, 2015, to include all holidays, through and including on a continuous basis until this Matter is settled ***’.”**

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 the instant dispute, the Organization alleges the Carrier violated the Agreement when it improperly disqualified the Claimant from his Machine Operator position on January 26, 2015.

On January 26, 2015, the Claimant received the following letter from his supervisor regarding the Claimant's disqualification:

"...This letter is to advise you that you are hereby disqualified as a Machine Operator for the following reasons:

You consistently fail to demonstrate the appropriate safe and responsible behavior to perform your duties adequately.

Therefore you are disqualified as a Machine Operator and you must exercise your seniority as allowed..."

In summary, the Organization argues that the Carrier's decision to disqualify the Claimant was arbitrary, unjust, unwarranted, and cannot stand.

In summary, the Carrier argues a) the Carrier has the managerial right to determine the fitness, ability, and qualifications of its employees, subject only to limited review by the Board as to whether the Carrier was arbitrary in its determination, b) the Organization has failed to provide any evidence to dispute the Carrier's basis for disqualifying the Claimant, and c) the Organization failed to satisfy its burden of proof.

Boards of Arbitration have found that the Carrier has the managerial right to judge fitness and ability, provided that such determinations and findings are not arbitrary. [See Third Division Award 36957] The Board has carefully reviewed the record here and cannot find the Carrier was arbitrary in its decision to disqualify the Claimant from his Machine Operator position. The record identified various reasons for the Claimant's disqualification, such as: Failure to properly maintain logbooks regarding machine operation, failure to utilize perimeter lighting when working at night, and a general disregard for safe practices. The record is void any probative

evidence showing the Carrier was arbitrary in its decision to disqualify the Claimant. As a result, the claim is denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 11th day of August 2020.