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PUBLIC LAW BOARD NO. 4104

JAN 12

Case No. 68

B.M.W.E.

PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's disqualification of Work Equipment Operator T. Dalrymple as tractor-lowboy operator at Galesburg, Illinois on December 21, 1984 was unfair, unreasonable and unwarranted.

2. As a consequence of the aforesaid violation, Claimant T. Dalrymple shall be returned to the position of tractor-lowboy operator at Galesburg, Illinois, and he shall be compensated for all wage loss suffered, including overtime, and any expenses incurred as a result of his unfair disqualification because of working other assignments and all expenses related to the hearing, such as telephone calls, postage and wages the day of the hearing.

OPINION OF THE BOARD: On December 10, 1984, Claimant, T. Dalrymple, while assigned as a regional gang truck driver, gave notification of his intention to exercise his seniority to displace into a tractor-lowboy operator position effective December 14, 1984. Claimant operated the lowboy over a six day period until December 21, 1984 when he was disqualified.

The Organization alleges that Carrier violated Rule 23 of the Agreement when it failed to afford Claimant a reasonable opportunity to qualify. Rule 23 states:

A. Employees awarded bulletined positions, or employees securing positions through exercise of seniority, in a class in which not yet qualified, will not be disqualified for lack of ability to do such work after a period of thirty (30) calendar days thereon. Employees will be given reasonable opportunity in their seniority order to qualify for such work as their seniority may entitle them to, without additional expense to the Company.

It contends that since Claimant was not a qualified tractor-lowboy operator, the Carrier was required to afford him a

reasonable opportunity to qualify for such work in accordance with the provisions of Rule 23. It asserts that Claimant was disqualified from the position after only six working days. The Organization further notes that Claimant sought the assistance of the supervisors in an attempt to qualify for the position. It maintains that Claimant was capable of performing the duties of the position and demonstrated that ability when given the proper instructions. In the Organization's view, the disqualification of Claimant was unfair, unreasonable and unwarranted. It asks that the claim be sustained in its entirety.

In opposition, Carrier insists that it properly disqualified Claimant as a tractor-lowboy operator. It points out that Claimant exercised his seniority to displace another employee on a position that he claimed he was qualified to handle. However, it argues that after a period of time, it became apparent that Claimant did not know the duties of the assignment. Carrier maintains that numerous instances occurred during the six day period attesting to Claimant's inability to perform the duties of the position. Accordingly, Carrier maintains that Claimant was properly disqualified and asks that the claim be denied in its entirety.

The resolution of this dispute centers on whether Claimant was given a reasonable opportunity to qualify for the lowboy operator position. After a thorough examination of the transcript of the hearing, we do not think so. The daily duties involved in the performance of a position must be learned and developed through practical experience. Carrier can not assume that an employee in

a new position will be able to handle all the responsibilities of the position without assistance and guidance from supervisors. It is obvious in this case that six days was an inadequate period of time for Carrier to make a reasonable judgment as to his qualifications. Therefore, for the foregoing reasons, the claim is sustained.

With respect to the remedy, we will allow Claimant an additional opportunity to qualify for the lowboy operator position.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD: Claim sustained to the extent indicated in the Opinion.

Paul Swanson
P. Swanson, Employee Member

Eino Kallinen
E. Kallinen, Carrier Member

Martin F. Scheinman
Martin F. Scheinman, Neutral Member

1/2/91