

Award No. 100  
Case No. 100

**PUBLIC LAW BOARD NO. 4244**

**PARTIES ) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.**  
**TO THE ) AND**  
**DISPUTE ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**STATEMENT OF CLAIM:** Carrier's decision to disqualify Southern Region Machine Operator R. D. Turman from operating the Ballast Regulator, effective September 26, 1991 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant's right to operate Ballast Regulators and compensate him for all wages lost from September 26, 1991 and continuing until the claimant is allowed to operate said machine.

**FINDINGS:** This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

The record shows that in a letter dated September 26, 1991, the Carrier disqualified the Claimant as a Ballast Regulator Operator. In response, the Organization requested a formal investigation concerning the matter. Accordingly, Southern Region Machine Operator R. D. Turman (the "Claimant") was notified to attend a formal investigation on November 8, 1991, to determine his ability to safely and properly operate a ballast regulator. As a result of the investigation the Carrier determined that the Claimant should remain disqualified as a Ballast Regulator Operator.


Assistant Superintendent-Maintenance E. J. Rotondo, Roadmaster L. S. Watson and Work Equipment Supervisor R. E. Beyer testified at the formal investigation that the Claimant was not qualified to operate a ballast regulator. Their testimony established that the Claimant had been involved in several mishaps with the ballast regulator that resulted in damage to the machine. Based on the circumstances surrounding the mishaps and the extent of damage to the machine, it was their opinions

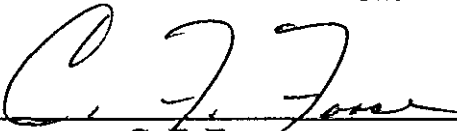
that these incidents would not have occurred if the Claimant had operated the machine properly. There were also statements submitted at the investigation from supervision declaring that the Claimant was not capable of operating the ballast regulator and other machines in a safe and productive manner.


The Organization argued that the Carrier failed to prove that the Claimant was not a qualified Ballast Regulator Operator. The testimony of record was deficient because the Carrier did not produce any witnesses who were qualified operators and present when the incidents occurred. The testimony offered by the Carrier's witnesses was either hearsay or speculation based on the damage to the machine. However, the Claimant's witnesses offered testimony that established the Claimant's ability to operate the machine. For example, Ballast Machine Operator E. D. Fabbs, who is a qualified operator and was present when the Claimant plowed out a crossing, testified the Claimant was operating the machine correctly. Further, his inspection of the damage indicated that the plow was locked in place at the time of the incident, contrary to that alleged by the supervisors.

After reviewing the evidence of record, the Board finds that the Carrier failed to establish that the Claimant was not a qualified Ballast Regulator Operator. Accordingly, it is the Board's decision that the Claimant shall be paid the difference in rates between Ballast Regulator and the position that he was assigned while junior employees held the position of Ballast Regulator Operator. However, the Claimant will not receive any compensation for the period of time that the Claimant could have operated other Class 2 machines but elected not to accept such an assignment.

**AWARD:** Claim sustained as set forth above.

  
Alan J. Fisher  
Chairman and Neutral Member

  
C. F. Foosé  
Organization Member

  
Lyle L. Pope  
Carrier Member

Dated: October 18, 1993  
Schaumburg, Illinois