

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 44

System Docket No. BMW-290D

STATEMENT OF CLAIM

The Organization contests the disciplinary action of the Carrier in assessing Claimant Salvatore Palmisano a ten-day suspension and permanently disqualifying him in all classes of Machine Operator.

FINDINGS

The Claimant had previously been disqualified on April 21, 1992 as an Operator of a Scarifier, a Class A machine, because of "unacceptable performance". In September 1996, while classified as a Machine Operator B, the Claimant was again assigned to operate a Scarifier. In doing so, according to the Carrier, he was involved in five separate instances of unacceptable performance between September 3 and September 17.

Following an investigative hearing, the Claimant was assessed a ten-day disciplinary suspension and was disqualified from

operating all machines. The Organization protested both the suspension and the fact that the Claimant's disqualification encompassed all machine operation, rather than simply the Scarifier. An attempt to settle the matter in compromise fashion was not successful, so that the original disciplinary action remained in effect.

Because of the varied nature of the Claimant's reported poor performance, the Board sees no basis to disturb the ten-day disciplinary penalty. As to disqualification, it is the Carrier's well established prerogative to determine the qualifications of its employees. Under the circumstances, the Board has no reason to question the Carrier's action in regard to the Claimant's operation of any on-track machines such as the Scarifier. No basis was offered, however, for disqualifying the Claimant as a Machine Operator C, involving hand-operated machines.

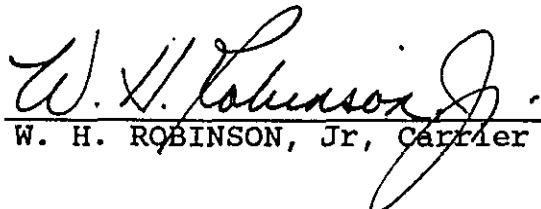
The Award will support the disciplinary suspension and the disqualification of the Claimant as operator of on-track equipment (Machine Operator A and B). The Award will further provide that the disqualification should not extend to barring the Claimant from a filling a vacancy in a Machine Operator C position for which his seniority may make him eligible.

A W A R D

Claim sustained to the extent provided in the Findings. The Carrier is directed to make this Award effective within 30 days of the date of this Award.


HERBERT L. MARX, Jr., Chairman and Neutral Member


B. A. WINTER, Employee Member


W. H. ROBINSON, Jr, Carrier Member

NEW YORK, NY

DATED: *JULY 3, 1998*