

**PUBLIC LAW BOARD NO.7008**

**PARTIES TO THE DISPUTE:**

CSX TRANSPORTATION, INC.

- and -

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

**STATEMENT OF CLAIM:**

In accordance with provisions of Rule 25, Section 3, of the June 1, 1999 Agreement, the following will serve as our appeal of the disqualification assessed to BMW employee Johnny Wilson ID#\*\*\*\*\*, in letter dated April 28, 2006, from Assistant Chief Engineer R.B. Stevens, in connection with the disqualification hearing held on April 12, 2006 in Louisville, KY.

For the reasons stated herein and the objections taken at the hearing, the investigation was not fair and impartial and the Carrier has provided no legitimate support for the disqualification. Therefore, the disqualification letter and all matters relative thereto should be expunged from Mr. Wilson's personal record, Mr. Wilson should be immediately returned to the spike driving machine, and be made whole for all losses suffered.

**OPINION OF BOARD:**

The former Baltimore and Ohio Railroad Company (a CSXT predecessor) hired Mr. J. Wilson (hereinafter referred to as "Claimant") in the Maintenance of Way Department on June 2, 1981. At all times relevant to this dispute, Claimant was assigned as Spike Driver Machine Operator.

In January 2006 the Claimant was awarded a position as a Spike Driver Machine Operator on System Production Team (SPT) 6XT8. The record demonstrates that Claimant has worked just such a position, on various machines, since 1992.

While working near New Orleans, LA, Manager System Teams R. Musgrove, Claimant's supervisor, observed Claimant was not operating the spike driver machine "in a safe and efficient manner". Additionally, Supervisor Musgrove noted that Claimant Wilson "continually" lagged behind the remainder of the production team. Due to Claimant's alleged inability to keep pace with his SPT co-workers, on March 8, 2006 Supervisor Musgrove disqualified the Claimant from the position of Spike Driver Machine Operator, replacing the Claimant with another operator. On the same day, the Claimant received confirmation of his disqualification, effective March 8, 2006 at the close of business, and instructed to attend a April 4, 2006 hearing relative to his disqualification. After a mutually agreed upon postponement, the hearing was held to completion on April 12, 2006, and by letter dated April 28, 2006 the Claimant's disqualification as a Spike Driver Machine Operator was confirmed. Specifically, Carrier stated that:

"Upon review of the transcript, the facts support and confirm the disqualification, as you failed to perform your duties as a spike driver operator in a satisfactory manner as required for System Production. The speed at which you operated the equipment delayed the team in that you were unable to keep up with the equipment in front of you. I ask that you take time to reflect on the incidents that led to your disqualification and take appropriate actions to learn from this experience. You are an important member of the CSX Team and I look forward to your future contributions."

On May 8, 2006, BMW Vice Chairman Smith appealed what he referred to as the "discipline assessed to BMW employee V.C. Pritchard." Specifically, the Vice General Chairman alleged that the Carrier failed to show that the Claimant lacked sufficient aptitude to operate the machine. The Vice Chairman further opined that the Claimant was disqualified "merely because his machine lagged behind". According to the Vice Chairman, Carrier's reason for the Claimant's

disqualification was not "sufficient" as Carrier "never provided any formal training on this type of machine, and it has allowed the Claimant to operate this machine and similar machines since their inception many years ago."

Carrier denied the claim, noting at the outset that the Claimant's "inability" to maintain an adequate speed sufficient to keep pace with the rest of the team constituted adequate justification for disqualification. With regard to the Organization's assertion that the Agreement requires Carrier to provide training, Carrier notes that: "The Agreement obligation to which Mr. Smith refers is for an employee who had not previously been assigned to such position", a situation which is dissimilar to Claimant's. The Carrier further noted that upon Claimant's March 8 disqualification, his trainee "kept pace with the team".

The transcript of the hearing reveals that Claimant's due process rights under the applicable rules of the Agreement were fully protected and the hearing was conducted in a fair and impartial manner. During the handling on the property, both Parties alluded to "damage" to the Spike Driver which Claimant operated from January 2006 until his disqualification on March 8, 2006. However, the record is bereft of any substantive evidence which would support either Party's innuendoes, and therefore, that portion of the issue will not be addressed further.

Turning to the merits of the dispute, the Organization asserts that the disqualification was "discipline assessed to employee V.C. Pritchard". For its part, the Carrier argues that the Claimant was disqualified from the position at issue because he lacked sufficient ability to keep pace with the Production Team. In support of its decision, Carrier notes that the Claimant's trainee was able to "immediately" replace the Claimant and keep pace with the Gang in order to maintain the requisite production levels. In that connection, Supervisor Musgrove stated that:

"On the date (March 8) I asked the Claimant to run something else so that we could determine whether or not we had a machine problem or just maybe slow motor skills on his part or running the machine. The machine he was operating was about a half a mile behind the front machine. Now the way they spike on the T8 is, they spike every other tie. In other words, his responsibility was to spike as many ties as the machine in front of him. I made the decision to not let him run the machine that day, and at the end of the day, with another operator, that machine had caught up to the one in front of it. So it helped me to determine that I did not have a machine problem, but it was indeed the Claimant....".

When asked what the other spike driver operator was doing while the Claimant was "catching up", Mr. Musgrove succinctly replied: "Waiting".

Claimant's supervisor further testified, without dispute, that the Claimant "asked" to be disqualified from the position. Specifically, Mr. Musgrove maintained that at first he only wanted to take the Claimant off of the machine for the day to determine "the problem". However, according to Mr. Musgrove, the Claimant asked to be disqualified so that he could "roll" to another gang, although after he and his supervisor discussed the situation and Mr. Musgrove informed him that he was, in fact, going to be disqualified, the Claimant refused to sign a waiver regarding same.

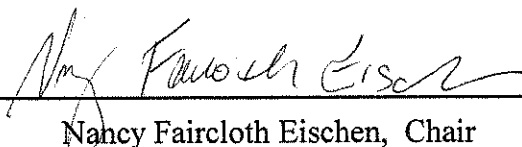
Finally, although the Claimant argued that he had trained "at least" two (2) other employees on the Spike Driver, he did not dispute the fact that he requested the disqualification at issue. Simply put, the Claimant's supervisor deemed his request "valid", and after observing both the Claimant and his replacement, Supervisor Musgrove reacted accordingly.

Premised upon all of the foregoing, this claim must be denied.

AWARD NO.9  
NMB CASE NO.9  
UNION CASE NO.D21143606  
COMPANY CASE NO.12(06-0469)

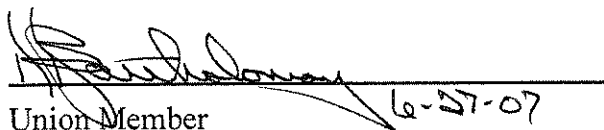
AWARD

Claim denied.

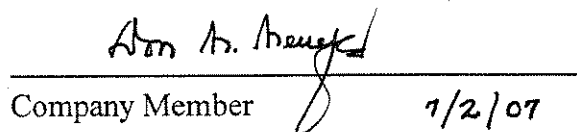


Nancy Faircloth Eischen, Chair

Dated at Spencer, New York on June 19, 2007



Union Member 6-27-07



Company Member 7/2/07