AWARD NO.13
NMB CASE NO.13
UNION CASE NO.D21728905
COMPANY CASE NO.12(05-1117)

PUBLIC LAW BOARD NO.7008

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

- and -

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Appeal of discipline assessed to BMWE employee V.C. Pritchard, ID#****, as a result of the hearing held on September 22, 2005, at Louisville, Kentucky.

That the charge letter and all matters relative thereto be removed from Mr. Pritchard's personal file and he be returned to the Spike Driver, and he be made whole for all losses suffered as a result of the Carrier's actions.

OPINION OF BOARD:

V. C. Pritchard (hereinafter referred to as "Claimant") was hired in Carrier's Maintenance of Way Department in February 1979. At the time this dispute arose, in February 2005, the Claimant was awarded a position as Spike Driver Machine Operator on System Production Force ("SPF") 6XT1.

The record demonstrates that during the approximately sixty (60) days in which Claimant held the position, he was not able to qualify for the position. In a letter dated July 21, 2005, the Claimant received confirmation of his disqualification as a Spike Driver Machine Operator effective the close of business on July 20, 2005. As a result of the disqualification, Claimant was instructed

to attend an August 17, 2005 hearing relative regarding same. Following two (2) postponements, the hearing convened, and was held to completion, on September 22, 2005. Thereafter, in a letter dated October 4, 2005, the Claimant's disqualification as a Spike Driver Machine Operator was confirmed.

On October 11, 2005 the BMWE Vice Chairman appealed what he referred to as "discipline assessed to BMWE employee V. C. Pritchard", which was subsequently denied by Carrier's highest officer to handle such matters, Director Labor Relations J. Wilson in a letter dated December 10, 2005. In the denial, Carrier stated that:

"Claimant simply could not meet the demands required by the production team. On each occasion, when Claimant's lack of performance resulted in the entire team lagging behind, he would be replaced by another operator, who, in each instance regained the productivity lost by Claimant's substandard performance. On one occasion, when Claimant's unfamiliarity with the machines's controls resulted in damage to the equipment, thereby halting production, required that Claimant be replaced by another machine operator who, without the benefit of the machine being repaired regained the production lost by Claimant's mishap".

Following a December 13, 2006 conference regarding Claimant's disqualification, Mr. Wilson issued his final declination letter on February 9, 2006. When the Parties were unable to resolve the dispute, it was placed before the Board for resolution.

The Organization raised one (1) procedural objection at the outset of the hearing, maintaining that Claimant's right to a fair and impartial hearing was "hampered" by Carrier's "refusal" to provide the Organization with "any statements that may be introduced by Carrier be provided for our review before the investigation in order for us to attempt to prepare a proper defense per Rule 24 [I] sic of

the CSXT Agreement..." There is no provision in Agreement Rule 24[i], or any other Agreement rule which requires the "right of discovery". Therefore, in that regard, we find no violation of the Agreement.

Turning to the merits of the dispute, at the onset of his testimony at the August 17, 2005 hearing, the Claimant asserted that he was not given ample time to train on the machine. Specifically, when questioned, the Claimant stated that: "They claimed I was too slow", but attributed the problem to the following:

"I actually got on the spiker about the latter part of March. They wouldn't-didn't want me to go back on it, the reason being they had their operators that they wanted on there. And whenever I did go on it, I'd operate anywhere from 10, 15 minutes, maybe an hour. Sometimes, if I was lucky, I was on it for three hours and then they'd take me off. Usually whenever they took me off, something was wrong and we'd get behind whenever we'd go to get the machine fixed, then they'd come back and jerk me off of it again....." Unfortunately, in an effort to convince the Hearing Officer that he was not given adequate time to train, the Claimant made an admission against self-interest when he stated that he was "repeatedly" removed from the machine due to frequent mechanical problems. In that connection, when asked if the spike driver he operated had "more breakdowns" than the norm, the Claimant replied in the affirmative. Of note, the Claimant went on to admit that "some of the breakdowns were beyond the operator's control, but some were not".

It is unfortunate that a long time employee such as the Claimant was not able to qualify for the position which he sought. However, we are persuaded by the record evidence that Carrier had justification to disqualify the Claimant, and exercised reasonable managerial discretion in doing so. Based on the foregoing, we conclude this claim must be denied.

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