

PUBLIC LAW BOARD NO. 7258

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 6
UNION PACIFIC RAILROAD COMPANY) Award No. 6
_____)

Hearing Date: November 12, 2008

STATEMENT OF CLAIM:

1. The disqualification of Multi Crane Operator Leon E. Torres is improper, unjust, unwarranted and in violation of the Agreement (Carrier's File 1484557 UPS).
2. As a consequence of Part 1 above, the Organization requests that Mr. Torres be immediately returned to his system multi crane operator position on Gang 8502. Mr. Torres shall also be compensated the difference in pay, both straight time and overtime from June 22, 2007 and continuing, between his current assigned position of welder and his former position as system multi crane operator.

FINDINGS:

Public Law Board No. 7258 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On June 22, 2007 Claimant was verbally informed by his supervisor that he was disqualified as a multi crane operator although no reason for the disqualification was specified at that time. By letter dated July 13, 2007 a telephone conference was scheduled and that conference took place on July 23, 2007 with the Carrier deciding to uphold Claimant's disqualification. The Carrier based its decision to uphold the disqualification, in part, on a Crane Operator Qualification Checklist, signed and dated by Claimant's Work Equipment Supervisor on July 23, 2007 that noted unsatisfactory operation of the crane purportedly observed by a Work Equipment Supervisor and a Track/Bridge Supervisor on May 6, 2007.

On July 27, 2007, the Organization received a copy of the aforementioned Crane Operator Qualification Checklist and determined that, in fact, the multi crane was not on the work site nor was claimant operating the machine on May 6, 2007, the date of the reported observation upon which the disqualification rests.

The Organization thus argues that the Carrier improperly disqualified Claimant because there was no valid justification whatsoever for the disqualification and that therefore the Carrier's action was unreasonable.

The Carrier argues that it is well established in disqualification cases such as this, that the Carrier has the right to determine whether the employee is qualified for the position, and that once that determination has been made, that the burden of proof shifts to the organization to come forward with positive evidence to support the contention that the Carrier's decision was arbitrary, capricious, or that the Carrier acted in an unreasonable manner. (*See Third Division Award 30119 (Ref. Mason); Third Division Award 30093 (Ref. Duffy)*).

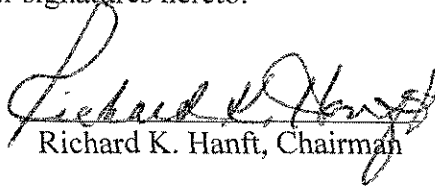
In this matter, we find that the Organization has carried its burden to come forward with evidence that the Carrier's decision was unreasonable. Although it is well established that the Carrier retains the right to determine whether an employee demonstrates the requisite fitness to perform a job, when that determination is based on faulty information, it is unreasonable to uphold the decision to disqualify. In light of the fact that it was established on the record that the machine in question was neither on the work site nor was the employee who was disqualified operating the machine, the carrier acted unreasonably by upholding the employee's disqualification.

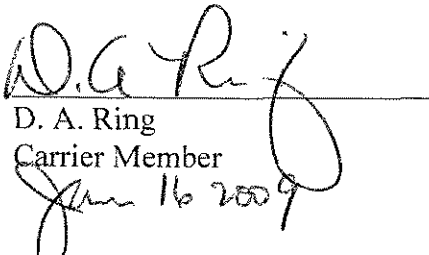
AWARD

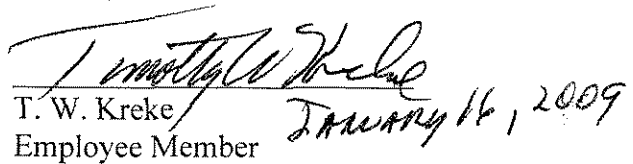
Claim sustained.

ORDER

The Board having determined that an award favorable to the Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Richard K. Hanft, Chairman


D. A. Ring
Carrier Member
Jan 16 2009


T. W. Kreke
Employee Member
January 16, 2009

Dated at Chicago, Illinois, November 30, 2008