

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 155, (Case No. 176)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
K. N. Novak, Carrier Member

Hearing Date: February 23, 2011

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier improperly disqualified and removed Mr. E. Mingo from his Brandt Power Unit operator position on September 18, 2009 (System File UP-514-JF-09/1525101).**
- 2. As a consequence of the violation referred to in Part 1 above, the aforesaid disqualification shall now be rescinded and Claimant E. Mingo shall now receive all straight time and overtime wage losses by being compensated for the difference between the hours and wage rates he worked and the hours and wage rate he would have received absent the aforesaid disqualification beginning September 18, 2009, and continuing."**

FINDINGS:

Public Law Board No. 6402, upon the whole record and all 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.

Review of the record reveals that the Claimant had been in the service of the Carrier since December 10, 1997. He had established seniority in various classifications, including Truck Operator. Prior to the alleged disqualification from his Brandt Power Unit Operator position on Lufkin Subdivision Gang 9236 the Claimant had been on the assignment in excess of 100 days.

The facts indicate that on September 18, 2009, the Claimant was issued a letter which stated in pertinent part:

"After several extensions and training sessions you have failed to exhibit and meet the requirements for a Brandt Truck Operator. Among others, you have had problems with Tracking Time and locations, inability to LOTO the Brandt Truck, and derailed the truck due to failure to follow proper procedures. All these events could have had serious consequences to you, your fellow co-workers and equipment.

Since you have failed to meet the requirements for Brandt Truck Operator, you are hereby disqualified as a Brandt Truck Operator and need to exercise your rights accordingly."

It is the position of the Organization that the Claimant was entitled to a formal Investigation as the disqualification was tantamount to discipline. It argued on the merits that the Claimant was not sufficiently trained. It concluded that the disqualification should be rescinded and the Claimant made whole for loss of monies sustained.

It is the Carrier's position that the Claimant was not entitled to a formal Investigation as the disqualification was not discipline and in fact disqualification was a misnomer as he was issued a "Failure to Qualify Letter". It argued that the record substantiates that the Claimant demonstrated his inability to Track Supervisor J. Sullivan to Lock Out/Tag Out (LOTO) the Brandt Truck on September 17, 2009, for routine inspection of the truck, derailling the truck because of not following proper procedures outlined in the owner's manual, having trouble with track and time issues and not following instructions of locking in differentials on the truck for hy-rail operations. It closed by asking that the Claim remain denied.

The Board has thoroughly reviewed the record and determined that the Organization's colorization of the subject dispute as a disqualification case is in error as it instead involves a failure to qualify. It stands un-rebutted that the Claimant was assigned to the position of a Brandt Truck Operator and was having trouble mastering those duties and responsibilities. Rather than failing him within 30 days as covered by Rule 19(c) the Carrier afforded him multiple extensions and training sessions for qualification purposes (which was not denied by the Claimant). Subsequently, it was determined that the additional time given the Claimant to become fully qualified for the job was to no avail. In a written statement of October 28, 2009, Supervisor Sullivan stated why he issued the failure to qualify and in pertinent part he wrote the following:

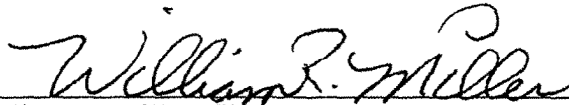
"...This letter was issued because of his inability to LOTO his truck on September 17 for routine inspection of the truck, derailling the truck because of not following proper procedures outlined in the owner's manual, having trouble with track and time issues and not following instructions of locking in differentials on the truck for hy-rail operation. These issues were all discussed in detail and Mr. Mingo admitted that each of these items were

correct...." (Underlining Board's emphasis)


Supervisor Sullivan's statement was not effectively refuted. The Board finds and holds that the Claimant was given extensive training opportunities, but was unable to satisfactorily operate the Brandt Truck in accordance with Carrier Rules and continued to have problems with Track and Time Limits regulations, therefore, the Carrier's decision to issue the Failure to Qualify letter of September 18, 2009, was not prohibited or contrary to the Agreement. The Claim will remain denied.

AWARD

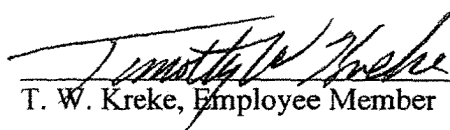
Claim denied.



William R. Miller, Chairman



K. N. Novak, Carrier Member



T. W. Kreke, Employee Member

Award Date: June 27, 2011