

PUBLIC LAW BOARD NO. 2774

Award No. 75

Case No. 112

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Atchison, Topeka and Santa Fe Railway Company

STATEMENT  
OF CLAIM

- "1. That the demotion of Machine Operator B. H. Duffle was premature, unjust, and based on circumstances beyond his control and in violation of the current agreement.
2. That claimant now be restored to the position of Machine Operator and that he be compensated for all wage loss suffered equal to the amount between what he received as a Machine Operator Helper and what he would have received as a Machine Operator commencing June 5, 1982, and each working day subsequent thereto."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that claimant herein had worked for Carrier for many years. For eleven years prior to the date of the claim he had been a Machine Operator and of that period of time had been a Ballast Regulator Operator for the prior ten years. On June 5, 1982, the Roadmaster informed claimant that effective as of that date he was disqualified as a Ballast Regulator Operator and was permitted to work as a Miscellaneous Machine Operator Helper. He was not disqualified from all machines but rather only from the ballast regulator.

Petitioner takes the position that Carrier's Roadmaster and Assistant Road Master decided that, rather than disciplining claimant herein for failure to allegedly perform his duties properly, they would instead disqualify him. Petitioner argues that the Carrier officials were incorrect in disqualifying

claimant based on facts which simply were not in existence and had occurred prior to the period involved. The Organization argues further that Carrier apparently was critical of claimant for not performing his work in a manner satisfactory to the Roadmaster and his Assistant. Those deficiencies were apparently failure to replace certain hoses on the broom of the ballast regulator and for not completing his work assignments to their satisfaction. The Organization presented evidence from a work equipment maintainer in the area indicating that the principal problem which claimant found himself confronted with was a deficiency in the way a part had been installed in the regulator. Furthermore, this evidence tends to support the fact that the claimant was perfectly capable of operating the equipment appropriately. Thus, the Organization concludes that the action on Carrier's part of disqualifying claimant was purely a disciplinary measure for his alleged failure to comply with instructions and that he was not afforded an opportunity to defend himself against the charges made by his superiors.

Carrier argues initially that the claim is not properly before the Board for consideration since it was not handled properly in that it was filed before the wrong Carrier official. The basis for Carrier's contention on this score is that the claim does not involve discipline and that it was presented on the basis of a disciplinary matter in this case. Carrier argues that with respect to the merits its investigation reveals that claimant's performance and attitude had deteriorated to the extent that he could not maintain his machine nor perform the duties required of his position. Therefore, Carrier argues, it had no choice but to disqualify claimant as a Ballast Regulator Operator. In support of its position, Carrier argues that on several occasions it had been necessary to send claimant back to a particular location to redo a job that he was assigned to do and, further, claimant was constantly lagging behind the production surfacing gangs. He could not keep up with the work assignments and do them correctly. Carrier concludes that he did not possess the requisite fitness and ability to properly operate and handle the duties of the Ballast Regulator Operator and, hence, he was properly disqualified.

An examination of the record of this dispute indicates that the Roadmaster and

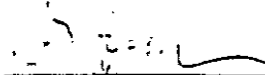
Assistant Roadmaster involved herein, who were the Carrier officers making the decision with respect to claimant's disqualification, both stated in writing that they did not wish to issue demerits to claimant because of his long and faithful service. Further, they felt that he was very lax in his performance and should be disqualified before he became a liability and a safety hazard. On a prima facie basis from the state of the record, it appears that Carrier has not sustained its decision to disqualify claimant properly. Had there been a proper investigation of the circumstances surrounding claimant's alleged deficiencies, or had he been accorded an investigation or hearing with respect to Carrier's decision, he might well have been disqualified. However, it is clear from the state of the record, including the evidence submitted with respect to the equipment maintainer, that claimant was disqualified herein in lieu of being disciplined. In that context, Carrier's procedural contention must be rejected. Thus, this Board cannot abide by a decision disqualifying an employee who had functioned on a particular piece of equipment satisfactorily for ten years in the guise of disqualification when in fact discipline was contemplated and would have been the appropriate remedy, if any. Had the Carrier issued demerits to this employee, such action might have resulted in a hearing and, in any event, would not have completely disqualified the employee from operating equipment which he had successfully operated for some ten years. The Board's conclusion is that the claim must be sustained.

AWARD

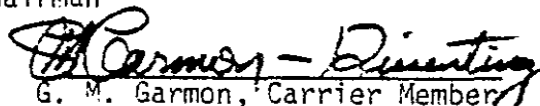
Claim sustained.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.

  
I. M. Lieberman, Neutral-Chairman

  
C. F. Foote, Employee Member

  
G. M. Garmon, Carrier Member

Chicago, Illinois  
July 23, 1984