

Award No. 120
Case No. 122

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Carrier's decision to disqualify Eastern Region Machine Operator S. L. Mackey from operating the Little Giant Crane and the Burro Crane, effective November 24, 1992, was unjust.

Accordingly, Carrier should be required to expunge the November 24, 1992 letter of disqualification and compensate the claimant for all wages lost as a result of not being able to operate the two cranes involved beginning November 24, 1992.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

The record shows that in a letter dated November 24, 1992, from Assistant Vice President D. J. McDougal Eastern Region Machine Operator S. L. Mackey (the "Claimant") was advised that he was disqualified from operating the Little Giant Crane and the Burro Crane. It was McDougal's position that the Claimant did not have the necessary fitness and ability to operate the cranes safely.

The Claimant took exception to the Carrier's position and requested a formal investigation concerning his disqualification. Pursuant to the Claimant's request an investigation was held on January 15, 1993. Based on the testimony offered at the investigation the Carrier upheld its decision to disqualify the Claimant under Rule 1042 of the Carrier's Rules and Instructions for Maintenance of Way and Structures.

Roadmaster D. D. Shinliver testified at the formal investigation that he observed the Claimant operating the cranes and other types of machines on or about October 5, and then two weeks later. After observing the Claimant on the cranes, Shinliver determined that the Claimant "did not have the proper motor skills, coordination, to operate the Little Giant Crane."

4244

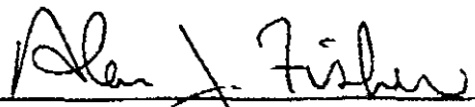
Award No. 120

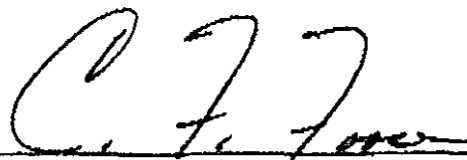
Page No. 2

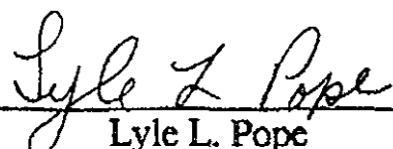
In summary, the Organization argued to the Board that the Claimant is an experienced Machine Operator but only had eight hours operating the crane when he was observed by Shinliver. In support of its position, the Organization referred to the Claimant's testimony at the formal investigation where he offered a detailed record of his time operating the cranes. The Claimant further testified that during this period, T. Avalos, the assigned Crane Operator, operated the crane because of time constraints concerning the various jobs. Hence, the Claimant declared that he was not given sufficient time to qualify on the equipment.

Based on a review of the evidence and testimony of record, the Board finds that the Claimant should be given another trial period to qualify on the Little Giant Crane and the Burro Crane.

AWARD: Claim sustained as set forth above.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foote
Organization Member


Lyle L. Pope
Carrier Member

Dated: March 1, 1994
Schaumburg, Illinois